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# TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. ~~81~~ ~~183~~ 183

ELISHA T. LORING AND CHARLES A. WELCH,

APPELLANTS,

*vs.*

CHARLES H. PALMER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

FILED DECEMBER 29, 1882.

# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1883.

No. 814.

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APPELLANTS,

*vs.*

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

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*a* The Circuit Court of the United States for the Eastern District of Michigan. In Equity.

CHARLES H. PALMER, Complainant,
*vs.*
ELISHA T. LORING and CHARLES A. WELCH, Defendants.

*Record.*

ASHLEY POND,
SCHUYLER F. SEAGER,
HOYT POST,
*Solicitors for Complainant.*

CHARLES I. WALKER,
*Solicitor for Defendants.*

1, 2, 3 *Bill of Complaint.*

To the Judges of the Circuit Court of the United States for the Eastern District of Michigan.—In Equity:

Your orator, Charles H. Palmer, of the city of Pontiac and State of Michigan, and a citizen of said State, brings this his bill of complaint against Elisha T. Loring and Charles A. Welch, residents of the city of Boston, in the State of Massachusetts, and citizens of said State, and thereupon your orator complains and shows as follows, to wit:

1st. That in the year 1856, and for a number of years thereafter, your orator was engaged with the said defendant, Elisha T. Loring and one William B. Frue, who at that time resided in the county of Houghton, in the State of Michigan, in the purchase of lands in the upper peninsula of the said State of Michigan, and in the formation of corporations, and in the purchase and sale of stocks of said corporations engaged in mining in said upper peninsula.

That during the period in which these transactions were carried on such purchase and sale of lands and stock were for the most part made in the name of said Loring as trustee, and the stock belonging to your orator and said Frue in the newly-organized companies also stood in the name of said Loring as trustee.

That the title of said land and stocks was taken in this manner for the purpose of convenience, and your orator and said Frue, from time to time, each paid to said Loring large sums of money on account of transactions in which they were engaged.

2d. That in the month of June, 1868, your orator, together with the said Frue, purchased of Thomas F. Mason, of the city of New York, the following-described lands lying and being situate in the county of Houghton in said State and eastern district of Michigan, to wit: the north half of the northwest quarter and the northwest quarter of the southwest quarter of section number twenty-three (23), in township number fifty-six (56), north of range number thirty-three (33) west, containing one hundred and twenty (120) acres.

That at the time said purchase was made your orator and said Mason were at the village of Houghton in said county of Houghton.

That your orator agreed to pay for said lands the sum of twenty thousand dollars, but, as said Mason had not with him the form
4 of land contract usually used by him, he declined to execute a formal contract for such purchase until he returned to his home in the city of New York. A memorandum of the transaction was, however, made at the time and submitted to the said Mason, and by him assented to; and your orator thereupon wrote and addressed a letter to said Loring, at the city of Boston, and enclosed in said letter the said memorandum, and instructed the said Loring to go to the city of New York, upon the return of said Mason, and obtain from said Mason a formal contract for the sale of said lands in accordance with the agreement in that behalf made with your orator as aforesaid; and, as your orator is informed and believes, the said Loring did shortly thereafter, and in pursuance of said instructions, go to New York and enter into and receive said formal contract, and a copy thereof is hereto annexed and marked "Exhibit A." Said contract, by its terms, runs to the said Elisha T. Loring as trustee, and your orator shows that said purchase was so made in the name of said Loring and said contract executed to him as vendee thereunder, as trustee, in trust for the joint use and benefit of himself and the said Frue and your orator.

3d. That in the month of July or August next following and after the completion of said purchase, to wit, July or August 1868, the said Loring and said Frue, and your orator at the said village of Houghton, agreed to and with each other that said lands should be held and owned by them jointly, the title standing in the name of said Loring as trustee in that behalf, and your orator upon information and belief shows that the said Frue, had before that time paid to the said loring an amount sufficient, together with moneys belonging to said Frue, then in the hands of said Loring, to pay his entire portion of the said purchase money.

That in the month of November, or early part of December, 1868, upon consultation by your orator with the said Loring, at the city of Boston, in reference to providing funds to meet the remaining payments due upon said property, it was determined to sell stocks belonging to your orator, standing in the name of said Loring as trustee, and your orator a few days thereafter and prior to the 18th day of said December, sold stocks belonging to him in Waterbury, Connecticut, for fifteen thousand dollars, and instructed the said Loring to draw for that amount upon the parties purchasing, and said Loring shortly after said 18th day of December informed your orator that he had collected the said money and had paid to said Mason the said instalments upon the purchase of the land hereinbefore described, and your orator charges such to be the fact.

5 And your orator further shows that said Loring at that time held stocks and other securities belonging to your orator of the market value of upwards of eight thousand dollars, which

were subsequently, and in the early part of the year 1869, sold by said Loring, and upwards of eight thousand dollars received by him on account thereof, and that during the entire year of 1868 and 1869, the said Loring held in his hands moneys belonging to your orator more than sufficient to pay all advances made by said Loring for your orator upon account of any and all transactions in which they were enguged, including the purchase made from said Mason as aforesaid.

4. In the month of March, 1869, the said Loring, in a letter addressed to your orator, enclosed a contract entered into between the said Mason and himself as trustee as aforesaid for the purchase of said premises as hereinbefore stated, and to said contract was annexed a memorandum, agreement, or declaration of trust, in the handwriting of said Loring, and a copy of said contract and said agreement or declaration of trust is hereto annexed, marked "Exhibit A;" and your orator prays leave to refer to the same as a part of this his bill of complaint. Referring to said Exhibit "A," your orator shows that his interest in said premises as therein defined is stated as one-quarter instead of one-third, but he shows that no modification or change of the terms of the original agreement for the purchase of said property was ever made by and with the consent of your orator, but that said change was made by said Loring upon his own motion.

5. That in the month of May, 1869, as your orator is informed and believes, said Loring made, executed, and delivered to said Frue a deed for an undivided quarter of said property, a copy of which deed, taken from the record of the office of the register of deeds for said county of Houghton, is hereto annexed and marked Exhibit B, and made a part hereof; and your orator, upon like information and belief, shows that simultaneously with the delivery of said deed, an agreement was made and entered into between the said Frue and said Loring, each granting to the other the option of purchase in case either should desire to sell the said property, a copy of which agreement, taken from the record thereof in the office of the register of deeds in and for said county of Houghton is hereto annexed and marked Exhibit C, to which your orator prays leave to refer as a part of this his said bill.

6. That in the month of July, 1875, as your orator is informed and believes, the said Elisha T. Loring made, executed, acknowledged, and delivered to the defendant, Charles A. Welch, a deed conveying to said Welch, in trust for the purposes therein named, an undivided three-fourths interest in and to the said lands, a copy of which last-named deed, taken from the record thereof in the office of the register of deeds in and for the said county of Houghton, is hereto annexed, marked Exhibit D, and made a part hereof.

Referring to said Exhibit "B" your orator shows that there is nothing therein contained conflicting with or in any manner impairing the right of your orator in and to the said lands, whether

as determined by the agreement made at the time of said purchase from said Mason, or as stated in the agreement or declaration of trust contained in said Exhibit "A," and although your orator was advised of the execution of said deed shortly after the date thereof, he was not aware of the terms of the contract made concurrently with said deed between said Loring and the said Frue, of which Exhibit "C" is a copy, until the month of June or July last past.

7. Since the final payment in February, 1869, upon the property purchased from Mason, your orator has had no other dealings with the said Loring, and has repeatedly attempted to procure an adjustment and final settlement of his account with him, but has been unable to do so; in the month of October, 1871, the said Loring instituted a suit in this honorable court on the law side of said court against your orator, but never brought the same to trial, but in the month of June, 1874, voluntarily discontinued said suit without notice to your orator or his attorney.

That while your orator had, for a long time, feared that the said Loring was intending to cheat and defraud him of his interest in the lands hereinbefore described, he had no evidence thereof until July last past, when he learned of the deed executed by the said Loring to the said Welch, as hereinbefore stated. Referring to such deed your orator shows that it, in express terms, asserts the ownership in and to an undivided three-fourths of said lands as absolute, and not in trust for himself and your orator. And your orator has just reason to fear that said Welch may, under said deed of trust, execute a conveyance which will deprive your orator of his right in said lands, unless he be restrained by the order of this honorable court.

8. The interest of your orator in said lands is of the value of twenty thousand dollars and upwards.

In consideration of the premises your orator prays that aid of this honorable court to the end that the said defendants Elisha T. Loring and Charles A. Welch, respectfully, may full, true, direct, and perfect answer make, though not upon oath, their answer upon oath being hereby expressly waived, according to he best of their respective knowledge, information, and belief, to all and singular the matters herein contained.

7 2d. That said deed from said Elisha T. Loring so far as it conveys an undivided one-third of said premises belonging to your orator may be decreed to be in violation of the rights of your orators, and that the said Charles A. Welch be ordered and directed to release and convey to your orator one undivided one-third of said land, and in case of his neglect or refusal to execute, acknowledge, and deliver to your orator such deed within such time as may be provided by decree of this honorable court, that such decree may stand in lieu of such conveyance and invest in your orator the full right, title, and interest to such undivided one-third of said land.

3d. That the said defendants may, pending this suit, be enjoined

from conveying, or in any manner incumbering, the said undivided one-third of said land.

4th. That your orator may have such further or other relief as to the court shall seem meet, and that a writ of injunction in that behalf may issue out of and under the seal of this court.

5th. That a writ of subpœna issue to the said defendants, Elisha T. Loring, and Charles A. Welch, in accordance with practice of this honorable court, commanding them, and each of them, by a certain day, and under a certain penalty therein inserted, to be and appear before this honorable court, then and there to answer the premises and to stand to, abide by, and perform such order or decree as shall be agreeable to equity.

CHARLES H. PALMER.

ASHLEY POND,
*Sol. and of Counsel for Compl't.*

EASTERN DISTRICT OF MICHIGAN, *ss:*

On this 20th day of December, A. D. 1875, before me, a United States circuit court commissioner, personally appeared Charles H. Palmer, and being by me duly sworn, made oath that he had read the above and foregoing bill of complaint signed by him, and knew the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated upon information and belief, and as to such matters he believes it to be true.

ADDISON MANDELL,
*Commissioner Circuit U. S., Eastern Dis't of Mich.*

8 EXHIBIT A.

This agreement made the eighteenth (18) day of June, one thousand eight hundred and sixty-eight, between Thomas F. Mason, of the city, county and State of New York, of the first part, and Elisha T. Loring, trustee, of the city of Boston, county of Suffolk, State of Mass.

Witnesseth, that said party of the first part, in consideration of the sum of twenty thousand dollars to be paid as hereinafter mentioned, hereby agree to sell unto the said party of the second part, all the following described premises, to wit: situated in the county of Houghton and State of Michigan, the north half of the northwest quarter, and the northwest quarter of the southwest quarter of section twenty-three, in township fifty-six, north of range thirty-three west; which said premises the said party of the second part hereby agree to purchase and pay for in manner following, to wit: the sum of five thousand dollars on the execution and delivery of this instrument, the sum of seventy-five hundred dollars at the expiration of six months from the date thereof, and the sum of seventy-five hundred dollars to be paid eight months after the date thereof, with interest on the sum of fifteen thousand dollars, at and after the rate of seven per cent. per annum, from the date of this instrument till the same shall be paid.

It is further agreed, between the parties of this instrument, that said Mason, the party of the first part, will receive the said sum of fifteen thousand dollars or any part thereof, at any time prior to the dates of payment herein before mentioned, and that upon the payment of the entire sum of fifteen thousand dollars and interest, the party of the first part shall make, execute, and deliver to the party of the second part or his assigns, a proper deed for the conveying and assuring to him the fee simple of said premises free from all incumbrances, which deed shall contain a general warranty and the usual full covenants.

It is further agreed that said party of the second part shall be entitled to immediate possession of said lands and premises herein described, and shall pay all taxes or assessments of every name and nature assessed and imposed on said lands and premises after this date.

It is further hereby expressly understood and agreed, that the said terms of payment mentioned in this contract are hereby made material, and that the failure to pay any of said installments or interest on the days named for the payment thereof, shall render this contract absolutely null and void and that any installment paid before such failure, shall, by such failure, be forfeited, and that whatever amount may be paid, any failure of payment of any of said installments and interests, as the same shall fall due and become payable, shall make this contract absolutely void, and all rights, interests or titles under this contract shall be forfeited, and all and every equity and right in the said party of the second part, his heirs or assigns, shall thereby determine and become void. The clause in this contract, mentioned relative to the execution of a deed of the said party of the second part, being by the agreement of the parties hereto expressly made subject to the agreement, of forfeiture in case of any failure of payment of said installments, and interest on the same shall fall due and become payable.

It is further nnderstood and agreed, that each and every of the stipulations hereinbefore in this contract mentioned, shall apply to and bind the heirs, executors, administrators, or assigns of the respective parties.

In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

THOS. F. MASON.
E. T. LORING, *Trustee.*

Sealed and delivered in presence of—
WM. HART SMITH,
*As to signature of T. F. Mason.*
H. F. ATWOOD,
*As to signature of E. T. Loring, Trustee.*

BOSTON, *March* 16, 1869.

Whereas Thos. F. Mason has deeded to E. T. Loring, in trust, the lands described in the within document, and rec'd therefor

in payment the sum mentioned therein, with the interest; therefore, be it known, for value rec'd, I hereby acknowledge that C. H. Palmer, or Wm. B. Frue, one or either of them, jointly or separately, are the owners of the undivided one-fourth part of said lands, and I hereby obligate myself, heirs, and executors to account to said Palmer, or his assigns for one-fourth part rec'd for the lands in question whenever a sale shall be made of the same.

ELISHA T. LORING.

Witness:
JAMES MOORE.

10 EXHIBIT B.

[United States Revenue Stamp, five dollars, cancelled.]

Quit Claim Deed, Elisha T. Loring to William B. Frue.

This indenture made the twenty-second day of May, in the year of our Lord one thousand eight hundred and sixty-nine, between Elisha T. Loring, of the city of Boston, in the commonwealth of Massachusetts, of the first part, and William B. Frue, of the county of Houghton, and State of Michigan, of the second part, witnesseth that the said party of the first party, for and in consideration of the sum of five thousand dollars to him in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, does by these presents grant, bargain, sell, remise, release, and forever quit claim unto the said party of the second part, and to his heirs and assigns forever, the undivided one-fourth interest of the following-described tracts of land situated in the county of Houghton, and State of Michigan, viz., the north half of the northwest quarter, and the northwest quarter of the southwest quarter of section No. twenty-three, (23); in township No. fifty-six (56) north of range thirty-three (33) west, containing one hundred and twenty acres, more or less, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining. To have and to hold the said premises above described to the said party of the second part, and to his heirs and assigns, to the sole and only proper use, benefit, and behoof, of the said party of the second part, his heirs and assigns forever.

In witness whereof, the said party of the first part have hereunto set his hand and seal the day and year first above written.

ELISHA T. LORING. [SEAL.]

Signed, sealed, and delivered in presence of—
DAN. H. BALL.
J. H. CHANDELR.

STATE OF MICHIGAN, } ss:
*County of Houghton*, }

On this twenty-second day of May, one thousand eight hundred and sixty-nine, before me, a notary public for said county, person-

ally came the above-named Elisha T. Loring, known to me to be the person who executed the foregoing instrument, and acknowledged the same to be his free act and deed.

DAN. H. HALL,
*Notary Public.*

Rec'd for record, May 22d, A. D. 1869, at 10 o'clock, A. M.
ALEX. POPE,
*Register.*

11 STATE OF MICHIGAN, } ss:
*County of Houghton,* }

OFFICE OF COUNTY CLERK AND REGISTER OF DEEDS.

I, Roland H. Brelsford, register of deeds of said county, do hereby certify that the annexed is a true and accurate copy of the original record of a quit claim from Elisha T. Loring to Wm. B. Frue, in my custody and keeping, as such register; that I have carefully compared said copy with said original record, and that the same is a true and accurate copy of said original and of the whole of the same.

[CIRCUIT COURT SEAL.] ROLAND H. BRELSFORD,
*County Clerk and Register of Deeds, Houghton Co., Mich.*

Dated Houghton, Mich., October 30th, 1874.

EXHIBIT "C."

Articles of agreement, made and entered into this twenty-second day of May, A. D. one thousand eight hundred and sixty-nine, by and between Elisha T. Loring, of the city of Boston, in the State of Massachusetts, of the one part, and William B. Frue, of the county of Houghton and State of Michigan, party of the second part, witnesseth, that whereas the following lands situated in the county of Houghton and State of Michigan, viz: the north half of the northwest quarter and the northwest quarter of the southwest quarter of section No. twenty-three, (23,) in township No. fifty-six, (56,) north of range No. thirty-three (33) west, have been purchased by said parties in the name of said Elisha T. Loring as trustee, said William B. Frue being entitled to the beneficiary interest in the undivided one-fourth of said lands;

And whereas said Elisha T. Loring has by quit-claim deed, dated this day, conveyed to said William B. Frue the legal title to said undivided one-fourth of said lands in fee simple;

Therefore, in consideration of the premises and of the mutual covenants and agreements of the said parties, each to the other, as herein mentioned, the said parties do mutually covenant and agree to and with each other as follows:

The said Elisha T. Loring does hereby covenant and agree to and with said William B. Frue—

First. That he will not sell his interest in said lands, nor any part thereof, to any person or persons other than said Frue until he

has first given said Frue an opportunity to purchase the same at the same prices and on the same terms as he can obtain from such other persons, and until said Frue has declined to purchase,
12 or neglected for sixty days after notice of such proposal so to purchase.

Second. That if said Frue shall desire to sell said lands at a price that can be obtained therefor, said Loring will join said Frue in a conveyance and sale thereof, unless he shall elect to purchase the interest of said Frue therein at the same rate that can be obtained for the whole as aforesaid, and shall so purchase and pay for said Frue's interest within ninety days after notice of said Frue's desire to sell as aforesaid.

In consideration of the foregoing agreements and covenants, said Frue does hereby covenant and agree to and with said Loring, that he will give to said Loring the same preference of right to purchase his entire interest in said lands as said Loring gives to him as aforesaid, on the same conditions and subject to the same limitations as above specified; and, further, if said Loring shall desire to sell said lands at any price that can be obtained therefor, that he will join in such sale and conveyance thereof, unless said Frue shall elect to purchase said Loring's interest therein at the same price that can be obtained therefor, and shall purchase and pay for the same within the same time after notice as above specified.

In case either party declines to purchase the interest of the other, after notice as specified in the first subdivision of the above mutual agreements, he is to execute, under his hand and seal, acknowledge, and deliver to the other party, a release of such other party from his agreement and covenant in said first subdivision contained.

The covenants and agreements herein contained are hereby declared to be binding on the respective heirs, representatives, and assigns of said parties, and shall continue in force until rendered void by a sale of the property or a release duly executed.

In testimony whereof the said parties have hereunto set their hands and seals, the day and year first above written.

(Signed) ELISHA T. LORING. [SEAL]
(Signed) WILLIAM B. FRUE. [SEAL.]

Signed, sealed and delivered in presence of—
DAN. H. BALL.
J. H. CHANDLER.

U. S. Int. Revenue stamp cancelled, six cents, cancelled.

13 STATE OF MICHIGAN, } ss:
*Houghton County*, }

On this twenty-second day of May, A. D. 1869, before me, a notary public in and for said county, personally came Elisha T. Loring and William B. Frue, known to me to be the identical persons who executed the foregoing instrument, who severally acknowl-

edged that they executed the same for the uses and purposes therein mentioned.

DAN. H. BALL,
*Notary Public.*

EXHIBIT "D."

Trust Deed.—Elisha T. Loring to Chas. A. Welch, N. ½ of NE. ¼, and N.W. ¼ of S.W. ¼, sec. 23, T. 56 N. 33 W.

To all persons to whom these presents shall come, I, Elisha T. Loring, of Boston, in the county of Suffolk, and commonwealth of Mass., gentleman, send greeting:

Whereas I am seized in fee simple of three undivided fourth parts of the following described lands, situated in the county of Houghton, and State of Michigan, viz:

The north half of the northwest quarter, and northwest quarter of the southwest quarter of section No. 23, in township No. 56 N. of range No. 33 west, containing one hundred and twenty acres, more or less, and one William B. Frue is seized in fee simple of the other undivided fourth part thereof, and by an agreement between me and said Frue, dated May 22d, 1869, and recorded with deeds of the county of Houghton, State of Michigan, on the same day, each of the parties thereto covenanted with the other not to sell his interest in said lands, or any part thereof, to any other person or persons, for any price, until an opportunity to purchase at the same price and terms had been offered to the other party to said agreement, and such other party had refused or neglected for sixty days after such notice to purchase; and also, that if either desired to sell said lands at a price obtainable, the other party would join in the conveyance, or within ninety days after notice of such desire buy the share of the one desirous to sell at a proportional price.

Now, be it known that I, the said Elisha T. Loring, in consideration of one dollar to me paid by Charles A. Welch, of Waltham, in the county of Middlesex, and said commonwealth, counsellor at law, the receipt whereof is hereby acknowledged, and for other good and valuable considerations do hereby grant, bargain, sell, and convey to the said Charles A. Welch all my right, title, and claim in the lands aforesaid, with all my rights in the covenants and
14 agreements of said indenture between said Frue and me, and subject to the covenants on my part therein contained.

To have and to hold the same to the said Charles A. Welch and his heirs; in trust, nevertheless, to and for the following uses, intents, and purposes: That is to say, in trust to hold the same subject to the covenants and agreements in said indenture contained until the death of me, the said Elisha T. Loring; and if I shall decease before fifteen years from this date, until the end of said fifteen years, and then to transfer and convey the same to my two sons, Thacher Loring and Charles W. Loring, and their heirs forever; but if during said time I shall request in writing the said

Welch to sell and convey the same, or if after my death my sons shall so request, said Welch shall do so as far as he can in conformity with the agreements and covenants contained in the agreement before set forth between me and said True, and in case of such sale the proceeds are to be conveyed at my death, or if I have before that time deceased, at once to my two sons and their heirs, the proceeds being kept properly and safely invested till such time.

The said Welch is not, however, to be bound by the acceptance of this deed to pay any taxes or expenses of any sort or kind upon the premises.

In witness whereof, I, the said Elisha T. Loring, have hereunto set my hand and seal this first day of July, A. D. eighteen hundred and seventy-five.

ELISHA T. LORING.

In presence of—
FRANCIS C. WELCH.
ALICE L. HOBBS.

STATE OF MASS., CITY OF BOSTON, } ss:
*County of Suffolk,* }

Be it remembered that on the second day of July, A. D. 1875, before me, James B. Bell, a commissioner of deeds for the State of Michigan, duly commissioned and sworn in and for the county and State aforesaid, residing in said city of Boston, personally came Elisha T. Loring, known to me to be the same person who executed the foregoing instrument, and acknowledged the same to be his free act and deed.

In witness whereof I have hereunto set my hand and affixed my official seal as a commissioner of deeds for the State of Michigan at said city of Boston, in the county aforesaid, on the day and year last above written.

JAMES B. BELL,
*Commissioner of Deeds for the State of Michigan.*

Received for record the 8th day of July, A. D. 1875, at 10 o'clock a. m.

15 And afterwards, to wit, on the 8th day of January, A. D. 1876, a certain proof of service of subpœna duly issued in said cause on the 20th day of December, A. D. 1875, was filed in the office of the clerk of this court, which subpœna with want of service was in the words and figures following, to wit:

*Subpœna returned, non est inventus.*

Circuit Court of the United States of America, for the sixth Circuit and Eastern District of Michigan, sitting in chancery.

SUBPŒNA, SEAL. The President of the United States of America, to Elisha T. Loring and Charles A. Welch, residents of the city of Boston, in the State of Massachusetts, who are citizens of the State of Massachusetts:

You are hereby commanded to be and appear in the circuit court of the United States of America, for the sixth circuit and eastern district of Michigan, sitting in chancery, before*fore* the judges thereof, at the district court room, in the city of Detroit, on the first Monday of January next ensuing, then and there to answer unto a bill of complaint exhibited against you as defendants, by Charles H. Palmer, of the city of Pontiac, in the State of Michigan, who is a citizen of the State of Michigan, as complainant. And this you shall in nowise omit, under the penalty of one thousand dollars.

Witness the Hon. Morrison R. Waite, chief justice of the Supreme Court of the United States, this twentieth day of December, in the year of our Lord one thousand eight hundred and seventy-five, and of the independence of the United States the one hundredth.

ADDISON MANDELL, *Clerk.*

*Memorandum.*

The above named defendants are required to enter their appearance in this suit with the clerk of this court, at his office in the city of Detroit, on or before the day to which this writ of subpœna is returnable, otherwise the bill of complaint in this cause will be taken *pro confesso* against said defendant.

ADDISON MANDELL, *Clerk.*

16 EASTERN DISTRICT OF MICHIGAN, *ss:*

I hereby certify and return that on the day of , A. D. 1876, I made diligent search for the within named defendants and could not find them within my bailiwick of Detroit.

Fees service $2.00

JOSEPH R. BENNET,
*U. S. Marshal.*
By A. STERNBERG, *Deputy.*

Endorsed: No. 1982. Circuit court of the United States for the sixth circuit and eastern district of Michigan, in chancery. Charles H. Palmer, comp't, *vs.* Elisha T. Loring and Charles A. Welch. Subpœna. Returned and filed January 8, 1876. A. Mandell, clerk.

17 And afterwards, to wit, on the 10th day of January, A. D. 1876, a certain affidavit was filed in the office of the clerk of this court, which affidavit was in the words and figures following, to wit:

*Affidavit of Non-Residence of Defendants, &c.*

Circuit Court of the United States for the Eastern District of Michigan. In Chancery.

CHARLES H. PALMER
*vs.*
ELISHA T. LORING AND CHARLES A. WELCH.

EASTERN DISTRICT OF MICHIGAN, *ss:*

Charles H. Palmer, being duly sworn, deposes and says that he

is complainant in the above-entitled cause; that a bill has been filed to enforce an equitable claim against certain lands lying within said State and eastern district of Michigan particularly described in said bill; that said defendants are non-residents of said State and district; that they reside in the city of Boston, in the State of Massachusetts; that a subpœna has been issued and returned without service upon said defendants for the reason that they could not be found within the said eastern district of Michigan, and neither of said defendants have voluntarily appeared in this suit.

CHARLES H. PALMER.

Subscribed and sworn to before me, this 8th day of January, A. D. 1876.

ADDISON MANDELL,
*Comm. of Circuit Court U. S., Eastern Dist. of Mich.*

Endorsed: 1982. U. S. circuit, in ch. Charles H. Palmer *vs.* Elisha T. Loring and Charles A. Welch. Affidavit for order for service, &c. Filed in open court Janu. 13, 1876. A. Mandell, cl'k.

18 And afterwards, to wit, and now on this day, that is to say: at a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment at the district court room in the city of Detroit, on Monday, the tenth day of January, in the year one thousand eight hundred and seventy-six.

Present: The Honorable Halmer H. Emmons, circuit judge.

CHARLES H. PALMMR, Compl't,
*vs.*
ELISHA T. LORING AND CHARLES A. WELCH, Def'ts. } In Equity.

It appearing to the court by the affidavit of Charles H. Palmer that the bill is filed in this cause to enforce an equitable claim in favor of the complainant against certain real property within said eastern district of Michigan, and that said defendants are not, nor are either of them, inhabitants of said district, but that they reside at the city of Boston, in the State of Massachusetts; that a subpœna has been duly issued and returned without service upon said defendants, because they could not be found within said distrtct, and that said defendants have not voluntarily appeared in this suit, it is now on motion of Ashley Pond, solicitor and of counsel for the complainant, ordered that said defendants, Elisha T. Loring and Charles A. Welch, appear and plead answer, or demur to the complainant's bill on or before the first Monday of March next.

And it is further ordered that this order be served by delivering a certified copy thereof to each of said defendants, wherever they may be found, within twenty days from the date hereof.

19 And afterwards, to wit, on the 21st day of January, A. D. 1876, a certain certified copy of order for appearance of defendants, with proof of service, was filed in the office of the clerk of this court, which order and proof of service was in the words and figures following, to wit:

*Certified copy of Order for Appearance of Defendants, with Proof of Personal Service thereof.*

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment at the district court-room, in the city of Detroit, on Monday, the tenth day of January, in the year one thousand eight hundred and seventy-six. Present, Honorable Halmer H. Emmons, circuit judge.

CHARLES H. PALMER, Complainant,
*vs.*
ELISHA T. LORING and CHARLES A. WELCH, Defendants.
} In Equity.

It appearing to the court, by the affidavit of Charles H. Palmer, that the bill is filed in this cause to enforce an equitable claim in favor of the claimant against certain real property within said eastern district of Michigan, and that said defendants are not, nor are either of them, inhabitants of said district, but that they reside at the city of Boston, in the State of Massachusetts, that a subpœna has been duly issued and returned without service upon said defendants, because they could not be found within said district, and that said defendants have not voluntarily appeared in this suit, it is now, on motion of Ashley Pond, solicitor and of counsel for the complainant, ordered that said defendants, Elisha T. Loring and Charles A. Welch, appear and plead, answer or demur to the complainant's bill on or before the first Monday of March next.

And it is further ordered that this order be served by delivering a certified copy thereof to each of said defendants, wherever they may be found, within twenty days from the date hereof.

THE UNITED STATES OF AMERICA,
*Eastern District of Michigan,* } *ss:*

I, Addison Mandell, clerk of the circuit court of the United States for the eastern district of Michigan, do hereby certify that the above and foregoing is a true copy of an order entered upon the journal of the proceedings of said court in the cause
20 therein entitled; that I have compared same with the original entry of said order, and it is a true transcript therefrom and of the whole thereof.

Witness my official signature, and the seal of said court, at Detroit, in said district, this eleventh day of January, in the year of our Lord one thousand eight hundred and seventy-six, and of the independence of the United States of America the one hundredth.

[SEAL.] ADDISON MANDELL,
*Clerk.*

UNITED STATES OF AMERICA, } ss:
*District of Massachusetts,* }

Robert B. Weiss, being duly sworn, deposes and says that on the 18th and 19th days of January, A. D. 1876, he delivered a certified copy of the order upon which this affidavit is endorsed, to Elisha T. Loring, and a like copy to Charles A. Welch, at the city of Boston, in said district.

ROBT. B. WEISS.

Subscribed and sworn to by the said Robt. B. Weiss, this 19th day of January, A. D. 1876, before me.

ELIAS MERWIN,
*U. S. Commissioner.*

Endorsed: No. 1982. Circuit court of the United States for the eastern district of Michigan. Charles H. Palmer *vs.* Elias T. Loring and Charles A. Welch. Certified copy of order, filed January 21st, 1876. Jno. Graves, dep'y cl'k.

21 And afterwards, to wit, on the 1st day of February, A. D. 1876, a certain præcipe was filed in the office of the clerk of this court, which præcipe was in the words and figures following, to wit:

*Præcipe for appearance of Charles A. Welch.*

Circuit Court of the United States, for the Eastern District of Michigan. In Equity.

CHARLES H. PALMER *vs.* ELISHA T. LORING and CH. A. WELCH. Addison Mandell, Clerk:

Please enter my appearanc as solicitor for defendant, Charles A. Welch, in the above-entitled cause.

ALFRED RUSSELL.

Endorsed: No. 1982. Circuit court of the United States for the east. dist. of Mich., in equity. Ch. H. Palmer *vs.* Elisha Loring and Ch. A. Welch. Entry of appearance filed Feb'y 1, '76. A. Mandell, cl'k.

22 And afterwards, to wit, on the first day of February, A. D. 1876, the appearance of the defendant, Charles A. Welch, in the above-entitled cause, was duly entered in the book of common orders kept by the clerk of this court in his office, in the words and figures following, to wit:

*Entry of Appearance of Charles A. Welch.*

Feb'y 1, 1876. In Equity.

CHARLES H. PALMER, Compl't,
*vs.*
ELISHA T. LORING and CHAS. A. WELCH, Deft's.

On filing præcipe in this cause and on motion of Alfred Russell,

solicitor for defendant, it is ordered that the appearance of said defendant, Charles A. Welch, by him as his solicitor, be and the same is hereby entered.

Entered by order of

ALFRED RUSSELL,
*Sol. for Def't Welch.*
Per A. MANDELL, *Cl'k.*

23 And afterwards, to wit, on the 8th day of February, A. D. 1876, a certain præcipe was filed in the office of the clerk of this court, which præcipe was in the words and figures following, to wit:

*Præcipe for Appearance of Elisha T. Loring.*

Circuit Court of the United States for the Eastern District of Michigan. In Equity.

CH. H. PALMER
*vs.*
ELISHA T. LORING, impleaded with CH. A. WELCH.

To Addison Mandell, clerk of said Court:

Please enter the appearance of the said defendant, Elisha T. Loring, by me as his solicitor.

EDWARD D. SOHIER,
9 Tremont St., Boston.

Endorsed: No. 1982. U. S. Circuit Court for East. Dist. of Mich. In Equity. Ch. H. Palmer *vs.* Elisha T. Loring impleaded with Ch. A. Welch. Entry of appearance filed in clerk's office Feb'y 8, 1876. A. Mandell, Cl'k.

24 And afterwards, to wit, on the eighth day of February, A. D. 1876, the appearance of the defendant, Elisha T. Loring, in the above-entitled cause was duly entered in the book of common rules, kept by the clerk of this court in his office, in the words and figures following, to wit:

*Appearance of Def't, Elisha T. Loring.*

Feb'y 8, 1876. In Equity.

CHARLES H. PALMER, Compl't,
*vs.*
ELISHA T. LORING and CHARLES A. WELCH, Def'ts.

On filing præcipe in this cause, and on motion of Edward D. Sohier, solicitor for said defendant, Elisha T. Loring, ordered that the appearance of said defendant, Loring, by him as his solicitor, be, and the same is hereby, entered.

Entered by order of—

EDWARD D. SOHIER,
*Sol. for Def't Loring.*
Per A. MANDELL, *Cl'k.*

25 And afterwards, to wit, on the 25th day of February, A. D. 1876, a certain demurrer was filed in the office of the clerk of this court, which demurrer was in the words and figures following, to wit:

*Demurrer of Elisha T. Loring.*

United States of America, Circuit Court of the United States for the Eastern District of Michigan.

CHARLES H. PALMER *vs.* CHARLES A. WELCH *et al.*

The Demurrer of Elisha T. Loring, one of the defendants named in said bill.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said complainant's bill contained to be true, in manner and form, as the same are therein and thereby set forth and alleged, doth demur to said bill, and for causes of demurrer showeth:

First. That the complainant hath not, in and by his said bill, made or stated such a case as entitles him, in a court of equity, to any discovery from this defendant or relief against him as to the matters contained in said bill or any of them.

Second. That the complainant's title to relief, as set forth in his bill, is uncertain and vague, and the grounds thereof, as stated by him, are vague, uncertain, and contradictory.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant doth demur thereto, and prays the judgment of this honorable court, whether he shall be compelled to make any further answer to said bill, and humbly prays to be hence dismissed with his reasonable costs in this behalf sustained.

ELISHA T. LORING,
By his Solicitor, EDWARD D. SOHIER.

I hereby certify that, in my opinion, the above demurrer is well founded in point of law.

EDWARD D. SOHIER,
*Solicitor for Elisha T. Loring.*

26 U. S. OF AMERICA, *Mass. Dist.:*

BOSTON, *February 23d*, 1876.

Personally appeared Elisha T. Loring, by Lafayette Burr, his attorney is fact, and made solemn oath that the foregoing demurrer is not interposed for delay before me.

[SEAL.] JOHN G. STETSON,
*U. S. Commissioner.*

Endorsed: No. 1982. U. S. circuit court, E. D. Mich., in equity. Charles H. Palmer, comp., *vs.* Elisha T. Loring *et al.* Demurrer of def't Loring, filed Feb'y 25, 1876. A. Mandell, cl'k.

27 And afterwards to wit, on the 25th day of February, A. D. 1876, a certain demurrer was filed in the office of the clerk of this court, which demurrer was in the words and figures following, to wit:

*Separate Demurrer of Charles A. Welch.*

United States of America, Circuit Court of the United States for the Eastern District of Michigan.

CHARLES H. PALMER *vs.* CHARLES A. WELCH *et al.*

The Demurrer of Charles A. Welch, one of the Defendants named in said bill.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said complainant's bill contained, to be true in manner and form as the same are therein and thereby set forth and alleged, doth demur to said bill, and for causes of demurrer showeth:

First. That the complainant hath not in and by his said bill made or stated such a case as entitles him in a court of equity to any discovery from this defendant or relief against him as to the matters contained in said bill or any of them.

Second. That it appears by the plaintiff's bill that certain persons, named therein as Thacher Loring and Charles W. Loring, should be parties thereto.

Third. That the complainant's title to relief as set forth in his said bill, is uncertain and vague, and the grounds thereof as stated by him are vague, uncertain, and contradictory.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant doth demur thereto and pray the judgment of this honorable court, whether he shall be compelled to make any further answer to said bill, and humbly prays to be hence dismissed with his reasonable costs in this behalf sustained.

ALFRED RUSSELL,
*Sol. for Def't Welch.*

I hereby certify that in my opinion, the above demurrer is well founded in point of law.

ALFRED RUSSELL,
*Counsellor-at-Law.*

28 U. S. OF AMERICA, *Mass. Dist.*

BOSTON, *February 23d*, 1876.

Personally appeared Charles A. Welch, one of the above-named defendants, and made solemn oath that the foregoing demurrer is not interposed for delay.

Before me,

[SEAL.] JOHN G. STETSON,
*U. S. Commissioner.*

Endorsed: No. 1982. U. S. circuit, E. D. Mich. In equity. Chas. H. Palmer *vs.* Elisha T. Loring and Chas. A. Welch. Separate demurrer of Chas. A. Welsh, filed Feb'y 25th, 1876. A. Mandell, cl'k.

29 And afterwards, to wit, on the 6th day of March, A. D. 1876, a certain order setting demurrer for argument was filed and entered in the office of the clerk of this court, which order was in the words and figures following, to wit:

*Order setting down Demurrer for Argument.*

Circuit Court of the United States for the Eastern District of Michigan.

CHARLES H. PALMER
*vs.*
ELISHA T. LORING AND CHARLES A. WELCH. } In Chancery.

And now comes the complainant by Ashley Pond, his solicitor, and sets down the demurrer interposed by the defendants Elisha T. Loring and Charles A. Welch, respectively, to the bill of complaint for argument.

ASHLEY POND,
*Sol. for Compl't.*

Endorsed: No. 1982. U. S. circuit court, east. dist. Mich. In Eq. Chas. H. Palmer *vs.* Elisha T. Loring. Order of setting down demurrer for argument. Entered and Filed March 6, 1876. A. Mandell, cl'k.

30 And afterwards, to wit, on the 26th day of May, A. D. 1876, a certain note of issue was filed in the office of the clerk of this court, which note of issue was in the words and figures following, to wit:

*Note of Issue for June Term*, 1876.

State of Michigan, in the Circuit Court of the United States, for the Eeastern District of Michigan. In Equity.

CHARLES H. PALMER
*vs.*
ELISHA T. LORING, impleaded with CHARLES A. WELCH.

The above cause will be brought on for hearing at the next term of this court, notice having been served on the part of the defendant, Loring, on Ashley Pond, solicitor for the complainant, according to the rules of this court. You will please place said cause on the chancery docket of this court for said term. On plea and demurrer.

EDWARD D. SOHIER,
*Sol'r for Elisha T. Loring.*

To the Clerk of said Court.

Endorsed: No. 1982. The circuit court of the U. S., for E. D. Mich. In equity. Chas. H. Palmer *vs.* Elisha T. Loring, impleaded, &c. Note of issue. On demurrer to bill filed May 26, '76. A. Mandell, cl'k.

31 And afterwards, to wit, on the 26th day of May, A. D. 1876, a certain note of issue was filed in the office of the clerk of this court, which note of issue was in the words and figures following, to wit:

*Note of Issue for June Term*, 1876.

State of Michigan, in the Circuit Court of the United States for the Eastern District of Michigan. In Equity.

CHARLES H. PALMER
*vs.*
CHARLES A. WELCH, impleaded with ELISHA T. LORING.

The above-entitled cause will be brought on for hearing at the next term of this court, notice having been served on the part of the def't, Welch, on Ashley Pond, solicitor for the complainant, according to the rules of this court. You will please place said cause on the chancery docket of this court for said term. On plea and demurrer.

ALFRED RUSSELL,
*Sol'r for Def't Welch.*

To the Clerk of said Court.

Endorsed: No. 1982. The circuit court of the U. S., for E. D. Mich. In equity. Chas. H. Palmer *vs.* Elisha T. Loring. Note of issue. Filed May 26, '76. A. Mandell, cl'k.

32 And afterwards, to wit, on the 19th day of May, A. D. 1877, a certain note of issue was filed in the office of the clerk of this court, which note of issue was in the words and figures following, to wit:

*Note of Issue for June Term*, 1877.

State of Michigan, in the Circuit Court of the United States for the Eastern District of Michigan. In Chancery.

CHAS. H. PALMER
*vs.*
ELISHA T. LORING and CHARLES A. WELCH. } Note of Issue.

This cause will be brought for on hearing, and is to be heard on demurrer at the next term of this court, notice of hearing having been served on Ashley Pond, sol. for compl't.

Dated May 19th, A. D. 1877.

Yours, &c.,

EDWARD D. SOHIER,
*Solicitor for Def't Loring.*
ALFRED RUSSELL,
*Sol'r for Def't Welch.*

To Addison Mandell, clerk.

Endorsed: No. 1982. The U. S. circuit court for the East. Dist. of Michigan, in chancery. Charles H. Palmer, complainant, *vs.* Elisha T. Loring and Chas. A. Welch, defendants. Note of issue. Filed this 19th day of May, A. D. 1877. A. Mandell, clerk.

33 And afterwards, to wit, and now on this day, that is to say, at a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment, at the district court room, in the city of Detroit, the ninth day of October, in the year one thousand eight hundred and seventy-seven.

Present: The Honorable Henry B. Brown, district judge.

CHARLES H. PALMER, Compl't
*vs.*
ELITHA T. LORING AND CHARLES A. WELCH, Def'ts. } In Equity.

This cause being called is hereby continued for the term, and on motion of Alfred Russell, solicitor for defendant, Elisha T. Loring, it is ordered that Charles I. Walker be, and he is hereby, substituted as solicitor for said defendant Loring in the place and stead of said Alfred Russel.

34 And afterwards, to wit, on the 22d day of October, A. D. 1877, a certain notice of hearing was filed in the office of the clerk of this court, which notice of hearing was in the words and figures following, to wit:

*Notice of Hearing for November Term*, 1877.

Circuit Court of the United States for the Eastern District of Michigan. In Chancery.

CHARLES H. PALMER, Complainant,
*vs.*
ELISHA T. LORING and CHARLES A. WELCH, Def'ts.

To the clerk of said court:

You will please place the above-entitled cause on the docket for the ensuing November term.

Yours, SOHIER,
*Sol'l for def't Loring.*
C. I. WALKER,
*Of Counsel.*

DETROIT, *October* 22d, A. D. 1877.

Endorsed: No. 1982. Circuit court of the U. S. for east. dist. of Mich. Charles H. Palmer, compl't, *vs.* Elisha T. Loring and Charles A. Welch, def'ts. Notice to place on docket notice of hearing, filed Oct. 22d, 1877. A. Mandell, cl'k.

35 And afterwards, to wit, and now on this day, that is to say, at a session of the circuit court of the United States for the eastern district of Michigan, continued and held at, pursuant to adjournment, at the district court room, in the city of Detroit, on Monday, the tenth day of December, in the year one thousand eight hundred and seventy seven.

Present: The Honorable Henry B. Brown, district judge.

CHARLES H. PALMER, Complainant,
*vs.*
ELISHA T. LORING AND CHARLES A. WELCH, Defendants. } In Equity.

This cause now coming on for hearing upon the demurrer of said defendants, is argued in part by counsel for ther espective parties, and continued for further hearing.

36 And afterwards, to wit, and now on this day, that is to say, at a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment, at the district court-room, in the city of Detroit, on Tuesday, the eleventh day of December, in the year one thousand eight hundred and seventy-seven, present the Honorable Henry B. Brown, district judge.

CHARLES H. PALMER
*vs.*
ELISHA T. LORING and CHARLES A. WELCH. } In Equity.

This cause again coming on for hearing upon the demurrer of said defendants, the arguments of counsel are concluded and the case submitted.

37 And afterwards, to wit, and now on this day, that is to say, at a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment, at the district court-room, in the city of Detroit, on Monday, the seventeenth day of December, in the year one thousand eight hundred and seventy-seven. Present, the Honorable Henry B. Brown, district judge.

CHARLES H. PALMER, Complainant,
*vs.*
ELISHA T. LORING and CHARLES A. WELCH,
Defendants. } In Equity.

The demurrer in this cause to complainant's bill having been heretofore argued by counsel for the respective parties and submitted, and the same having been duly considered, it is ordered that said demurrer be, and the same is hereby, sustained.

38 And afterwards, to wit, on the 8th day of April, A. D. 1878, a certain amended bill of complaint was filed in the office of

the clerk of this court, which amended bill was in the words and figures following, to wit:

In the Circuit Court of the United States for the Eastern District of Michigan. In Equity.

CHARLES H. PALMER, Complainant,
*vs.*
ELISHA T. LORING and CHARLES A. WELCH, Defendants.

*Amended Bill of Complaint.*

To the Judges of the Circuit Court of the United States for the Eastern District of Michigan. In Equity:

Your orator, Charles H. Palmer, of the city of Pontiac and State of Michigan, and a citizen of said State, brings this, his amended bill of complaint against Elisha T. Loring and Charles A. Welch, residents of the city of Boston, in the State of Massachusetts, and citizens of said State, and thereupon your orator complains and shows as follows, to wit:

1. That in the year 1856, and for a number of years thereafter, your orator was engaged with the said defendant, Elisha T. Loring and one William B. Frue, who at that time resided in the county of Houghton, in the State of Michigan, in the purchase of lands in the upper peninsula of the said State of Michigan, and in the formation of corporations, and in the purchase and sale of stocks of said corporations engaged in mining in said upper peninsula.

That during the period in which these transactions were
39 carried on, such purchase and sale of lands and stock were for the most part made in the name of said Loring as trustee, and the stock belonging to your orator and said Frue in the newly organized companies also stood in the name of said Loring as trustee.

That the title of said lands and stocks was taken in this manner for the purpose of convenience, and your orator and said Frue from time to time, each paid to said Loring large sums of money on account of transactions in which they were engaged.

2. That in the month of June, 1868, your orator, together with the said Frue, purchased of Thomas F. Mason, of the city of New York, the following described lands, lying and being situate in the county of Houghton, in said State and eastern district of Michigan, to wit: The north one-half of the northwest quarter, and the northwest quarter of the southwest quarter of section number twenty-three (23) in township number fifty-six (56) north of range number thirty-three (33) west, containing one hundred and twenty (120) acres of land; that said purchase was intended to be upon the joint account of said Loring, Frue and your orator, each sharing equally, provided the said Loring should desire an interest therein; that at the time it was made, the said Mason, Frue and your orator, were at the village of Houghton aforesaid, but said Loring, who was at

that time in Boston, had not been advised that the purchase was contemplated; that your orator agreed to pay for said land twenty thousand dollars ($20,000), but as said Mason had not with him the form of land contract usually used by him, he declined to execute a formal contract for such purchase, until he returned to his home in the city of New York.

A memorandum of the transaction was, however, made at the time, which was submitted to the said Mason, and by him assented to.

Your orator thereupon wrote and addressed a letter to the said Loring at the city of Boston, and enclosed in said letter said memorandum, and instructed the said Loring to go to the city of
40 New York upon the return of the said Mason, and obtain from him a formal contract for the sale of said lands, in accordance with the agreement with your orator in that behalf as aforesaid, and further proposing to the said Loring that said purchase be made upon the joint account of himself, Frue and your orator; that said letter was mailed to said Loring from said village of Houghton, upon the 20th day of June, A. D. 1868; that upon the 29th day of June aforesaid, your orator received from said Loring a telegraphic message accepting the proposition made to him as aforesaid, and stating that he had closed the contract.

And your orator received about this time letters by mail from said Loring, highly approving of said purchase, and reiterating his acceptance of the proposition made to him as aforesaid.

And your orator annexes hereto a copy of the contract made by said Loring with said Mason, marked Exhibit "A." Said contract by its terms runs to the said Elisha T. Loring as trustee, and your orator shows that said purchase was so made in the name of said Loring, and said contract executed to him as vendee thereunder as trustee, in trust for the joint benefit of himself, the said Frue and your orator.

3. That in the month of July next following, and after the completion of said purchase, to wit: July, 1868, the said Loring and said Frue and your orator at the said village of Houghton agreed to and with each other that said lands should be held and owned by them jointly, the titles standing in the name of said Loring as trustee in that behalf, and your orator, upon information and belief, shows that the said Frue had, before that time, paid to the said Loring an amount sufficient, together with moneys belonging to said Frue, then in the hands of said Loring, to pay his entire portion of the said purchase money.

That in the month of November or early part of December, 1868, upon consultation by your orator with the said Loring at the city of Boston, in reference to providing funds to meet the remaining payments due upon said property, it was determined to sell stocks belonging to your orator standing in the name of said Loring
41 as trustee, and your orator, a few days thereafter and prior to the 18th day of said December, sold stocks belonging to

him, in Waterbury, Connecticut, for fifteen thousand dollars, and instructed the said Loring to draw for that amount upon the parties purchasing, and said Loring shortly after said 18th day of December informed your orator that he had collected the said money and had paid to said Mason the said installments upon the purchase of the land hereinbefore described, and your orator charges such to be the fact.

And your orator further shows that said Loring at that time held stocks and other securities belonging to your orator of the market value of upwards of eight thousand dollars, which were subsequently and in the early part of the year 1869, sold by said Loring, and upwards of eight thousand dollars received by him on account thereof, and that during the entire years of 1868 and 1869, the said Loring held in his hands moneys belonging to your orator, more than sufficient to pay all advances made by said Loring for your orator upon account of any and all transactions in which they were engaged, including the purchase made from said Mason as aforesaid.

4. In the month of March, 1869, the said Loring in a letter addressed to your orator enclosed the contract entered into between the said Mason and himself as trustees as aforesaid, for the purchase of said premises as hereinbefore stated, and to said contract was annexed a memorandum agreement or declaration of trust in the handwriting of said Loring, and a copy of said contract and said agreement or declaration of trust is hereto annexed, marked "Exhibit A," and your orator prays leave to refer to the same as a part of this his bill of complaint. Referring to said "Exhibit A," your orator shows that his interest in said premises as therein defined, is stated as one-quarter instead of one-third, but he shows that no modification or change of the terms of the original agreement for the purchase of said property was ever made by and with the consent of your orator, but that said change was made by said Loring upon his own motion.

42 5. That in the month of May, 1869, as your orator is informed and believes, said Loring made, executed, and delivered to said Frue a deed for an undivided quarter of said property, a copy of which deed, taken from the record of the office of the register of deeds for said county of Houghton, is hereto annexed and marked "Exhibit B," and made a part hereof; and your orator, upon like information and belief, shows that simultaneously with the delivery of said deed an agreement was made and entered into between the said Frue and said Loring, each granting to the other the option of purchase in case either should desire to sell the said property, a copy of which agreement, taken from the record thereof in the office of the register of deeds in and for said county of Houghton, is hereto annexed and marked Exhibit "C," to which your orator prays leave to refer as a part of this his said bill.

6. That in the month of July, 1875, as your orator is informed and believes, the said Elisha T. Loring made, executed, acknowl-

edged, and delivered to the defendant, Charles A. Welch, a deed conveying to said Welch, in trust for the purposes therein named, an undivided three-fourths interest in and to the said lands, a copy of which last-named deed, taken from the record thereof in the office of the register of deeds in and for the said county of Houghton, is hereto annexed, marked "Exhibit D," and made a part hereof.

Referring to said Exhibit "B," your orator shows that there is nothing therein contained conflicting with, or in any manner impairing, the right of your orator in and to the said lands, whether as determined by the agreement made at the time of said purchase from said Mason, or as stated in the agreement or declaration of trust contained in said Exhibit "A;" and, although your orator was advised of the execution of said deed shortly after the date thereof, he was not aware of the terms of the contract made concurrently with said deed between said Loring and the said Frue, of which Exhibit "C" is a copy, until the month of June or July last past.

43 7. Since the final payment in February, 1869, upon the property purchased from Mason, your orator has had no other dealings with the said Loring, and has repeatedly attempted to procure an adjustment and final settlement of his account with him, but has been unable to do so. In the month of October, 1871, the said Loring instituted a suit in this honorable court on the law side of said court against your orator, but never brought the same to trial, but in the month of June, 1874, voluntarily discontinued said suit without notice to your orator or his attorney. That while your orator had for a long time feared that the said Loring was intending to cheat and defraud him of his interest in the lands hereinbefore described, he had no evidence thereof until July last past, when he learned of the deed executed by the said Loring to the said Welch, as hereinbefore stated. Referring to such deed, your orator shows that it in express terms asserts the ownership in and to an undivided three-fourths of said land as absolute, and not in trust for himself and your orator. And your orator has just reason to fear that said Welch may, under said deed of trust, execute a conveyance which will deprive your orator of his rights in said lands, unless he be restrained by the order of this honorable court.

8. The interest of your orator in said lands is of the value of twenty thousand dollars and upwards.

In consideration of the premises, your orator prays the aid of this honorable court, to the end that the said defendants, Elisha T. Loring and Charles A. Welch, respectively, may full, true, direct, and perfect answer make, though not upon oath, being hereby expressly waived, according to the best of their respective knowledge, information, and belief, to all and singular the matters herein contained.

2d. That said deed from said Elisha T. Loring, so far as it conveys an undivided one-third of said premises belonging to your

orator, may be decreed to be in violation of the rights of your orator, and that the said Charles A. Welch be ordered and
44 directed to release and convey to your orator one undivided one-third of said land, and in case of his neglect or refusal to execute, acknowledge, and deliver to your orator such deed within such time as may be provided by decree of this honorable court, that such decree may stand in lieu of such conveyance, and invest in your orator the full right, title, and interest to such undivided one-third of said land.

3d. That the said defendants may, pending this suit, be enjoined from conveying or in any manner encumbering the said undivided one-third of said land.

4th. That your orator may have such further or other relief as to the court shall seem meet, and that a writ of injunction in that behalf may issue out of and under the seal of this court.

5th. That a writ of subpœna issue to the said defendants, Elisha T. Loring and Charles A. Welch, in accordance with the practice of this honorable court, then and there to answer the premises and to stand to, abide, and perform such order or decree as shall be agreeable to equity.

CHAS. H. PALMER.

ASHLEY POND,
*Sol'r and of Counsel for Complainant.*

*Eastern District of Michigan, ss:*

On this 28th day of March, A. D. 1878, before me, a United States commissioner, personally appeared Charles H. Palmer, and being by me duly sworn, made oath that he had read the above and foregoing bill of complaint, signed by him, and knew the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated upon information and belief, and as to such matters he believes it to be true.

ADDISON MANDELL,
*Commis'r Circuit Court United States, East. Dist. of Mich.*

45 EXHIBIT A.

This agreement, made the 18th day of June, 1868, between Thomas F. Mason, of the city, county, and State of New York, of the first part, and Elisha T. Loring, trustee, of the city of Boston, county of Suffolk, State of Massachusetts.

Witnesseth, that the said party of the first part, in consideration of the sum of twenty thousand dollars, to be paid as hereinafter mentioned, hereby agrees to sell unto the said party of the second part all the following described premises, to wit: Situated in the county of Houghton, and State of Michigan, the north half of the northwest quarter, and the northwest quarter of the southwest quarter of section 23, in township 56 north, of range 33 west. Which said premises the said party of the second part hereby agree to purchase and pay for in manner following, to wit, the sum of five thousand

dollars on the execution and delivery of this instrument, the sum of seventy-five hundred dollars at the expiration of six months from the date thereof, and the sum of seventy-five hundred dollars to be paid eight months after the date thereof, with interest on the sum of fifteen thousand dollars, at and after the rate of seven per cent. per annum, from the date of this instrument until the same shall be paid.

It is further agreed between the parties to this instrument, that said Mason, the party of the first part, will receive the said sum of fifteen thousand dollars, or any part thereof, at any time prior to the dates of payment hereinbefore mentioned, and that upon the payment of the entire sum of fifteen thousand dollars and interest, the party of the first part shall make, execute, and deliver to the party of the second part, or his assigns, a proper deed for the conveying and assuring to him the fee simple of said premises, free from all incumbrances, which deed shall contain a general warranty and the usual full covenants.

It is further agreed that said party of the second part shall
46 be entitled to the immediate possession of said lands and premises herein described, and shall pay all taxes or assessments of every name and nature assessed and imposed on said lands and premises after this date.

It is further hereby expressly understood and agreed that the said times of payment mentioned in this contract are hereby made material, and that the failure to pay any of said installments or interest on the days named for the payment thereof, shall render this contract absolutely null and void, and that any installment paid before such failure, shall, by such failure, be forfeited. And that whatever amount may be paid, any failure of payment of any of said installments and interest as the same shall fall due and become payable, shall make this contract absolutely void, and all rights, interests, or titles under this contract shall be forfeited, and all and every equity and right in the said party of the second part, his heirs or assigns, shall thereby determine and become void, the clause in this contract mentioned relative to the execution of a deed to the said party of the second part being by the agreement of the parties hereto expressly made subject to the agreement of forfeiture in case of any failure of payment of said installments and interest on the same as they shall fall due and become payable.

It is further understood and agreed that each and every of the stipulations hereinbefore in this contract mentioned, shall apply to and bind the heirs, executors, administrators, or assigns of the respective parties. In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

THOMAS F. MASON.
E. T. LORING, *Trustee.*

Sealed and delivered in the presence of—
WM. HART SMITH, as to signature of Thomas F. Mason.
H. F. ATWOOD, as to signature of E. T. Loring, Trustee.

BOSTON, *March 16th*, 1859.

Whereas, Thomas F. Mason has deeded to E. T. Loring in
47 trust, the lands described in the within document, and received therefor in payment the sum mentioned therein with the interest, therefor, be it known that for value received I hereby acknowledge that C. H. Palmer or Wm. B. Frue, one or either of them, jointly or severally, are the owners of the undivided one-fourth part of said lands, and I hereby obligate myself, heirs, and executors to account to said Palmer, or his assigns, for one-fourth part received for the lands in question whenever a sale shall be made of the same.

ELISHA T. LORING.

Witness: JAMES MOORE.

EXHIBIT B.

Quit Claim Deed, Elisha T. Loring to William B. Frue.

[U. S. Rev. Stamp, $5, cancelled.]

This indenture, made the 22d day of May, in the year of our Lord one thousand eight hundred and sixty-nine, between Elisha T. Loring, of the city of Boston, in the commonwealth of Massachusetts, of the first part, and William B. Frue, of the county of Houghton, and State of Michigan, of the second part, witnesseth that the said party of the first part, for and in consideration of the snm of five thousand dollars to him in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, does by these presents grant, bargain, sell, remise, release, and forever quit claim unto the said party of the second part, and to his heirs and assigns forever, the undivided one-fourth interest in the following described tracts of land situated in the county of Houghton and State of Michigan, viz: the north half of the northwest quarter and the northwest quarter of the southwest quarter of section number twenty-three (23), in township number fifty-six (56), north of range thirty-three (33), west, containing one hundred and twenty acres, more or less, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, to have and to hold the said premises above de-
48 scribed to the said party of the second part, and to his heirs and assigns, to the sole and only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever. In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

ELISHA T. LORING. [SEAL.]

Signed, sealed, and delivered in the presence of—

DAN. H. BALL.

J. H. CHANDLER.

STATE OF MICHIGAN, }
*County of Houghton*, } *ss*:

On this 22d day of May, one thousand eight hundred and sixty-

nine, before me, a notary public for said county, personally came the above-named Elisha T. Loring, known to me to be the person who executed the foregoing instrument, and acknowledged the same to be his free act and deed.

DAN. H. BALL,
*Notary Public.*

Received for record May 22d, A. D. 1869, at 10 o'clock a. m.
ALEXANDER POPE, *Register.*

STATE OF MICHIGAN, *County of Houghton,* } *ss:*

OFFICE OF THE COUNTY CLERK AND REGISTER OF DEEDS.

I, Roland H. Brelsford, register of deeds of said county, do hereby certify that the annexed is a true and accurate copy of the original record of a quit-claim deed from Elisha T. Loring to Wm. B. Frue, in my custody and keeping as such register, that I have carefully compared said copy with said original record, and that the same is a true and accurate copy of said original, and of the whole of the same.

Dated Houghton, Mich., Oct. 30th, 1874.

ROLAND H. BRELSFORD,
*County Clerk and Register of Deeds, Houghton Co., Mich.*

49 EXHIBIT C.

Articles of agreement, made and entered into this twenty-second day of May, A. D. one thousand eight hundred and sixty-nine, by and between Elisha T. Loring, of the city of Boston, in the State of Massachusetts, of the one part, and William B. Frue, of the county of Houghton and State of Michigan, party of the second part. Witnesseth, that whereas the following land, situated in the county of Houghton and State of Michigan, viz: the north half of the northwest quarter and the northwest quarter of the southwest quarter of section number twenty-three (23), in township number fifty-six (56), north of range number 33 west, have been purchased by said parties in the name of said Elisha T. Loring, as trustee, said William B. Frue being entitled to the beneficiary interest in the undivided one-fourth of said land.

And whereas said Elisha T. Loring has, by quit-claim deed dated this day, conveyed to said William B. Frue, the legal title to said undivided one-fourth of said lands in fee simple; therefore, in consideration of the premises and of the mutual covenants and agreements of the said parties, each to the other as herein mentioned, the said parties do mutually covenant and agree to and with each other as follows:

The said Elisha T. Loring does hereby covenant and agree to and with said William B. Frue—

1. That he will not sell his interest in said land nor any part thereof, to any person or persons other than said Frue, until he has

first given said Frue an opportunity to purchase the same at the same prices and on the same terms as he can obtain from such other persons, and until said Frue has declined to purchase or neglected for sixty days after notice of such proposal so to purchase.

2. That if said Frue shall desire to sell said land at a price that can be obtained therefor, said Loring will join said Frue in a conveyance and sale thereof, unless he shall elect to purchase the
50 interest of said Frue therein at the same rate that can be obtained for the whole, as aforesaid, and shall so purchase and pay for said Frue's interest within 90 days after notice of said Frue's desire to sell as aforesaid.

In consideration of the foregoing covenants and agreements, said Frue does hereby covenant and agree to and with said Loring that he will give to said Loring the same preference of right to purchase his entire interest in said lands as said Loring gives to him as aforesaid, on the same conditions and subject to the same limitations as above specified; and further, if said Loring shall desire to sell said lands at any price that can be obtained therefor, that he will join in such sale and conveyance thereof, unless said Frue shall elect to purchase said Loring's interest therein at the same price that can be obtained therefor, and shall purchase and pay for the same within the same time, after notice as above specified.

In case either party declines to purchase the interest of the other, after notice as specified in the first subdivision of the above mutual agreements, he is to execute under his hand and seal, acknowledge and deliver to the other party, a release of such other party from his agreement and covenant in said first subdivision contained.

The covenants and agreements herein contained are hereby declared to be binding on the respective heirs, representatives, and assigns of said parties, and shall continue in force until rendered void by a sale of the property or a release duly executed.

In testimony whereof, the said parties have hereunto set their hands and seals the day and year first above written.

ELISHA T. LORING. [SEAL.]
WILLIAM B. FRUE. [SEAL.]

Signed, sealed, and delivered in the presence of—
DAN. H. BALL,
J. H. CHANDLER.

STATE OF MICHIGAN, }
*County of Houghton*, } *ss:*

On this twenty second day of May, A. D. 1869, before me, a notary public in and for said county, personally came Elisha
51 T. Loring and William B. Frue, known to me to be the identical persons who executed the foregoing instrument, who severally acknowledged that they executed the same for the uses and purposes therein mentioned.

DAN. H. BALL, *Notary Public.*

EXHIBIT D.

Trust Deed.—Elisha T. Loring to Charles A. Welch.

To all persons to whom these presents shall come, I, Elisha T. Loring, of Boston, in the county of Suffolk and commonwealth of Massachusetts, gentleman, send greeting:

Whereas, I am seized in fee simple of three undivided one-fourth parts of the following described lands situated in the county of Houghton and State of Michigan, viz.: the north half of the northwest quarter and northwest quarter of the southwest quarter of section No. 23, in township No. 56, north of range No. 33 west, containing one hundred and twenty acres, more or less, and one William B. Frue is seized in fee simple of the other undivided one-fourth part thereof, and by an agreement between me and said Frue, dated May 22, 1869, and recorded with deeds of the county of Houghton, State of Michigan, on the same day, each of the parties thereto covenanted with the other not to sell his interest in said lands, or any part thereof, to any other person or persons, for any price, until an opportunity to purchase at the same price and terms had been offered to the other party to said agreement, and such other party had refused and neglected for sixty days after such notice to purchase, and also that if either desired to sell said lands at a price obtainable, the other party would join in the conveyance, or within ninety days after notice of such desire, buy the share of the one desirous to sell, at a proportional price.

Now be it known that I, the said Elisha T. Loring, in considera-
of one dollar to me paid by Charles A. Welch, of Waltham, in the
county of Middlesex and said commonwealth, counsellor at
52 law, the receipt whereof is hereby acknowledged, and for other good and valuable consideration, do hereby grant, bargain, sell, and convey to the said Charles A. Welch all my right, title, and claim in the lands aforesaid, with all my rights in the covenants and agreements of said indenture between said Frue and me, and subject to the covenants on my part therein contained.

To have and to hold the same to the said Charles A. Welch and his heirs, in trust, nevertheless, to and for the following uses, intents, and purposes; that is to say, in trust to hold the same subject to the covenants and agreements in said indenture contained, until the death of me, the said Elisha T. Loring, and if I shall decease before fifteen years from this date, until the end of said fifteen years, and then to transfer and convey the same to my two sons, Thacher Loring and Charles W. Loring, and their heirs forever; but if during said time I shall request in writing the said Welch to sell or convey the same, or if after my death my sons shall so request, said Welch shall do so as far as he can in conformity with the agreements and covenants contained in the agreement before set forth between me and said Frue; and in case of such sale the the proceeds are to be conveyed at my death, or if I have before

that time deceased, at once to my two sons and their heirs, the proceeds being kept properly and safely invested until such time.

The said Welsh is not, however, to be bound by the acceptance of this deed to pay any taxes or expenses of any sort or kind upon the premises.

In witness whereof, I, the said Elisha T. Loring, have hereunto set my hand and seal this first day of July, A. D. 1875.

ELISHA T. LORING.

In presence of—
FRANCIS C. WELCH.
ALICE L. HOBBS.

STATE OF MASSACHUSETTS, CITY OF BOSTON, *County of Suffolk*, } *ss:*

Be it remembered that on the second day of July, A. D. 1875, before me, James B. Bell, a commissioner of deeds for the State of Michigan, duly commissioned and sworn, in [and] for the
53 county and State aforesaid, residing in said city of Boston, personally came Elisha T. Loring, known to me to be the same person who executed the foregoing instrument, and acknowledged the same to be his free act and deed.

In witness whereof, I have hereunto set my hand and affixed my official seal as a commissioner of deeds for the State of Michigan, at said city of Boston, in the county aforesaid, on the day and year last above written.

JAMES B. BELL,
*Commissioner of Deeds for the State of Michigan.*

Received for record the 8th day of July, A. D. 1875, at 10 o'clock a. m.

Amended bill of complaint filed in clerk's office April 8, 1878.
A. MANDELL, *Clerk.*

*Answers.*

In the Circuit Court of the United States for the Eastern District of Michigan.

CHARLES H. PALMER, Complainant,
*vs.*
ELISHA T. LORING and CHARLES A. WELCH, Defendants. } In Equity.

The answer of Elisha T. Loring, one of the defendants, to the bill of complaint of Charles H. Palmer, complainant in said cause.

This defendant, now and at all times hereafter, reserving to himself all lawful benefit and advantage of exception to the many errors, uncertainties, and other imperfections in said bill of complaint contained, for answer thereto, or to so much thereof as he is advised it is material or necessary to make answer unto, saith:

1. That it is true that the complainant was at one time engaged with this defendant and said William B. Frue in the purchase of lands in the upper peninsula of Michigan, in the formation
54 of corporations and in the purchase and sale of mining stocks in said upper peninsula, and that for the most part, such purchases were made and the stocks held in the name of this defendant, as trustee for all the parties in interest, but in all instances said lands and stock were disposed of agreeably to the order of the parties in interest and the proceeds applied as directed by such parties, and that nothing is due to said complainant on account thereof from this defendant.

2. This defendant is informed and believes, and therefore admits it to be true, that some time in June, 1868, the complainant made some verbal agreement with Thomas F. Mason, then of the city of New York, to purchase the lands described in paragraph number two of the complainant's bill, and that said bargain of purchase was made with the expectation that this defendant would become interested therein, together with the complainant and said Frue; that the price of said lands was the sum of twenty thousand dollars, and that no written contract was then made between the parties in relation thereto.

And this defendant further answers that said complainant did write to this defendant in relation to said purchase, and requested him to enter into a written agreement with said Mason for the completion thereof, and that some correspondence passed between said complainant and this defendant in relation thereto, but as many of the letters received by defendant, and some of the letter-books kept by him of copies of his own letters, have been destroyed by fire, he is unable to state the character of the correspondence, or whether there was any definite understanding expressed thereby in relation to the several interests that the said complainant, the said Frue, and this defendant were expected to have in said purchase, or as to the mode and time of payment; and he, therefore, neither admits nor denies the correspondence as set up in said second paragraph, but leaves the complainant to prove the same.

But this defendant admits that in consequence of such cor-
55 respondence, and growing out of it, this defendant did make the contract with said Mason, a copy of which is set forth in the complainant's bill and marked Exhibit "A," by which this defendant became personally obligated to said Mason to purchase said lands, and to pay therefor the sum of twenty thousand dollars, according to the terms mentioned in said contract, and that he did at the time of said purchase pay the sum of five thousand dollars.

3. This defendant denies that in the month of July next following said purchase, the said complainant, said Frue, and this defendant, agreed with each other orally, that said lands were to be held by them jointly, the title standing in the name of said Loring as trustee; but this defendant admits that it was the expectation that said Frue and said complainant, were to become interested in said

purchase upon their paying their proportion of the purchase money; and he admits that said Frue did pay to this defendant towards said purchase, the sum of five thousand dollars, soon after the making of said purchase, in the manner following: That said Frue had paid upon account of a company in which this defendant was interested, to one Edwards, in Houghton, in said State of Michigan, the sum of five thousand dollars, and that it was subsequently agreed between this defendant and said Frue, that said sum of five thousand dollars should be treated as a payment on account of said lands bought from said Mason, but on whose account said Frue made said payments—whether on his own or Palmer's, or for both, he did not know—and this is the only sum that has ever been paid to this defendant, either by said Frue or by said Palmer, towards the purchase money of said lands; and this defendant utterly denies that it was ever determined between said complainant and himself to sell any stocks belonging to the complainant, and standing in the name of this defendant as trustee, and to apply the same, or any portion thereof, upon the purchase money of said lands, or that he did then, or afterwards, or at any time, sell any stock belonging to the said complainant, or in which he had any interest, for the purpose of applying the proceeds thereof, or any portion thereof,
56 upon the purchase money of said lands, or that the proceeds of any such sale were so applied, or that he ever had in his hands moneys belonging to said complainant sufficient to pay the advances made by him to said Mason on account of said purchase.

But this defendant avers that, during the summer and fall of 1868, the succeeding winter, and the spring of 1869, said Palmer was greatly embarrassed and in great distress for money, and that this defendant had previously endorsed his notes to a very large amount, of which said Palmer had the proceeds, and that, for the purpose of meeting these endorsements and to enable this defendant to take up said notes, this defendant did sell certain stocks of said complainant, and apply the proceeds to the payment of said notes, a full and accurate account of all of which was rendered said Palmer at the time, and that no portion of the proceeds of said stocks was ever applied, or was to be applied, towards the payment of said lands purchased from said Mason.

On the contrary, this defendant paid to said Mason the entire purchase-money of said lands without ever receiving from the complainant, directly or indirectly, a single dollar to be applied upon said purchase, except the $5,000 above stated as received from Frue.

That when said last payment to Mason was about becoming due, in February, 1869, it was extremely inconvenient for this defendant to make that payment, and he was extremely desirous that the compainant should become interested in said purchase, and furnish a portion of the purchase-money, and he repeatedly wrote to said complainant, calling upon him to advance the money therefor, and that he sought to get the time of payment extended for the purpose of seeing whether said Palmer could not raise funds to pay towards

said lands, but in this effort he failed; and that said complainant, not being able to raise any money to meet said last payment, or any portion thereof, and to relieve this respondent in the premises, not only consented, but desired to give up all interest that he had expected to have in said land, and that this defendant should
57 pay for and own the entire of said land, save the one-quarter which had already been paid for by said Frue as aforesaid.

4. And this defendant further says, that on or about the eighth of March, 1869, the complainant wrote to this defendant, requesting him to send a statement that the said Frue owned an undivided one-quarter interest in said lands, as he had paid therefor.

In compliance with this request this defendant sent a copy of the contract of purchase between himself and and said Mason, and annexed thereto a declaration of trust in favor of said Frue, or said Palmer, a copy of which is annexed to the complainant's bill, and marked "Exhibit B."

Subsequently, and in April following, the said complainant sent to this defendant a written statement that said Frue was the sole owner of the interest mentioned in said declaration of trust, and that he had no interest therein.

5. This defendant admits that he executed the deed to said Frue, and the contract with said Frue, as stated in said paragraph five in the complainant's bill, and that a true copy thereof is annexed to the complainant's bill; he insists that he had a full right to make such contract, and that said complainant was, at the time, fully informed in relation to the nature of said contract.

6. And this defendant further admits that he executed the deed to said defendant Welch mentioned in paragraph six of the complainant's bill, a copy of which is annexed to said bill.

7. This defendant denies that said Palmer has had no dealings with him since February, 1869; on the contrary, this defendant after that time paid sundry notes which he had endorsed for said Palmer, and received certain moneys on his account towards said endorsement, leaving, however, a very large balance in favor of the defendant, and he has repeatedly tried to come to a final settlement with said defendant, but without success.

He also admits that he instituted the suit, as stated in said paragraph seven, against said complainant, and discontinued it
58 because he ascertained that said Palmer was utterly irresponand worthless.

8. He denies that the complainant has any interest whatever in said lands.

9. And this defendant further answering saith, that the complainant hath not by his bill made out any such case as entitled him to a decree, and for the reason, among others, that it does not sufficiently appear that the trust attempted to be set up in relation to said lands was reduced to writing in any such way as authorizes the enforcement thereof, and because the trust attempted to be set up is not one that can be enforced under the statute of Michigan, in relation

to uses and trusts, and because in other respects said bill is defective; and this defendant prays that he may have the same benefit of this defense as if he had demurred to said complainant's bill.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainant's said bill of complainant contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided and denied is true to the knowledge and belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

Dated June 24th, 1878.

ELISHA T. LORING,
By C. I. WALKER.

C. I. WALKER,
*Sol'r and of Counsel.*

Answer of defendant Loring filed in clerk's office June 24, 1878.
A. MANDELL, *Clerk.*

59 And afterwards, to wit, on the 19th day of July, A. D. 1878, complainant's replication to the answer of defendant Loring was filed in the office of the clerk of this court, which replication was in the words and figures following, to wit:

*Replication to Answer of Defendant Loring.*

The Circuit Court of the United States for the Eastern District of Michigan, in chancery.

CHARLES H. PALMER, Compl't,
*vs.*
ELISHA T. LORING and CHARLES A. WELSH, Def't,
} In Chancery.

The replication of Charles H. Palmer, complainant to the answer of Elisha T. Loring, one of the said defendants, this repliant saving and reserving to himself now and all times hereafter, all and all manner of benefit and advantage of exception which may be taken to the manifold insufficiencies of the said answer, for replication thereunto says that he will aver, maintain, and prove his said amended bill of complaint to be true, certain, and sufficient in the law, to be answered unto, and that the said answer of the said defendant, Elisha T. Loring, is uncertain, untrue, and insufficient, to be replied unto by this repliant without this, that any other matter or thing whatever in the said answer contained, material or effectual in the law, to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, and avoided, traversed or denied, is true; all which matters and things this repliant is and

will be ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays as in and by his said amended bill he has already prayed.

ASHLEY POND,
*Solicitor for Complainant.*

Endorsed: No. 1982. U. S. Circuit Court for the E. Dist. Mich. in chancery. Charles H. Palmer, complainant, *vs.* Elisha T. Loring *et. al.*, defendants. Replication to answer of defendant Loring. Filed this 19th day of July, 1878. John Graves, dp. clerk.

60 In the Circuit Court of the United States, for the Eastern District of Michigan. In Equity.

CHARLES H. PALMER, Complainant,
*vs.*
ELISHA T. LORING and CHARLES A. WELCH, Defendants.

The answer of Charles A. Welch, one of the defendants, to the bill of complainant of Charles H. Palmer, complainant in said cause.

This defendant now and at all times hereafter reserving to himself all lawful benefit and advantage of exception to the many errors, uncertainties, and other imperfections in said bill of complaint contained, for answer thereto, or to so much thereof as he is advised it is material or necessary to make answer unto, saith:

1. This defendant hath no personal knowedge of the averments in the first paragraph of complainant's bill, and neither admits nor denies the same, and leaves the complainant to prove the same as he may be advised.

2. This defendant has no personal knowledge of, and therefore neither admits nor denies the statements made in the second paragraph of said bill, in relation to the contract with said Mason; but on information and belief he denies that there was any correspondence between the defendant Loring and the complainant, showing in writing that said land was or was to be held in trust by said Loring, for complainant.

3. He has no personal knowledge of the matters alleged in the third peragraph of said bill, and cannot admit or deny the same on his personal knowledge.

4. This defendant has no personal knowledge in relation to the facts stated in the fourth paragraph of said bill, but he admits that before receiving the deed from said Loring, hereinafter re-
61 ferred to, he was shown a copy of said exhibit, and as to the other matters alleged, he neither admits nor denies the same, but leaves the complainant to make such proof as he may be advised.

5. This defendant admits the making of a deed of one-fourth of the premises described in said bill, by said Loring to said Frue, as averred in the fifth paragraph of complainant's bill,

6. This defendant admits that the defendant Loring made and delivered to this defendant a deed of three-quarters of said premises mentioned in said bill, as averred in the sixth paragraph of said bill; and this defendant insists that he received said deed without any notice of any of the equities whatever of said complainant, if any such he has, which he denies; and if he has any such equities, this defendant insists that he has been guilty of great laches in asserting the same, and he claims the advantage thereof as if he had demurred to said bill therefor.

7. This defendant has no personal knowledge in relation to the facts averred in the seventh paragraph of complainant's bill, and he neither admits nor denies the same, but leaves the complainant to his proof, as he may be advised.

8. He denies that the complainant has any interest whatever in said lands described in said bill.

9. And this defendant further answering saith, that the complainant hath not by his bill made out any such case as entitles him to a decree, and for the reason, among others, that it does not sufficiently appear that the trust attempted to be set up in relation to said lands was reduced to writing in any such way as authorizes the enforcement thereof, and because the trust attempted to be set up is not one that can be enforced under the statute of Michigan in relation to uses and trusts, and because in other respects said bill is defective; and this defendant prays that he may have the same benefit of this defense as if he had demurred to said complainant's bill.

And this defendant denies all and all manner of unlawful
62 combination and confederacy wherewith he is by the said bill charged, without this, that there is any other matter, cause or thing in the said complainant's said bill of complaint contained, material or necessary for this said defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed and avoided and denied, is true to the knowledge and belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

Dated, June 24th, 1878.

CHARLES A. WELCH,
By C. I. WALKER, *Solicitor.*

C. I. WALKER,
*Solicitor and of Counsel.*

63 Answer of def't Welch, filed in clerk's office, June 24, 1878.

A. MANDELL, *Cl'k.*

And afterwards, to wit, on the 19th day of July, A. D. 1879,

complainant's replication to the answer of defendant Welch was filed in the office of the clerk of this court, which replication was in the words and figures following, to wit:

*Replication to Answer of Defendant Welch.*

The Circuit Court of the United States, for the Eastern District of Michigan. In Chancery.

CHARLES H. PALMER, Compl't,
*vs.*
ELISHA T. LORING AND CHARLES A. WELCH, Def'ts.

The replication of Charles H. Palmer, complainant, to the answer Charles A. Welch one of the said defendants, this repliant saving and reserving to himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be taken to the manifold insufficiencies of the said answer for replication thereunto, say that he will aver, maintain and prove his said amended bill of complaint to be true, certain and sufficient in the law, to be answered unto; and that the said answer of the said defendant Charles A. Welch is uncertain, untrue and insufficient, to be replied unto by this repliant without this, that any other matter or thing whatever, in the said answer contained, material or effectual in the law, to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain and prove, as this honorable court shall direct, and humbly prays as in and by his said amended bill he has already prayed.

ASHLEY POND,
*Solicitor for Complainant.*

Endorsed: No. 1982. U. S. Circuit Court for the E. Dist. Mich. In Chancery, Charles H. Palmer, complainant, *vs.* Elisha T. Loring, Defendant's replication to answer of def't Welch filed this 19th day of July, 1878. Jno Graves, dep'y cl'k.

*Proofs.*

In the Circuit Court of the United States for the Eastern District of Michigan. In Equity.

CHARLES H. PALMER, Complainant,
*vs.*
ELISHA T. LORING AND CHARLES A. WELCH, Defendants.

It is hereby stipulated and agreed that the deposition of William B. Frue, taken in the above cause before Charles Flowers, Esq., under notice from complainant's solicitor to defendant's solicitor for the taking of such deposition *de bene esse*, and which said deposition is to be hereto annexed, may be used and read in evidence
64 on the hearing of said cause, all objections of form merely

being hereby waived, but subject, however, to all objections for incompetency, irrelevancy, and immateriality which the counsel for said defendants may desire to raise and present at the hearing.

ASHLEY POND,
*Solicitor for Complainant.*
C. I. WALKER,
*Solicitor for Defendants.*

In the Circuit Court of the United States for the Eastern District of Michigan. In Equity.

CHARLES H. PALMER, Complainant,
*vs.*
ELISHA T. LORING and CHARLES A. WELCH, Defendants.

Hon. CHARLES I. WALKER, *Solicitor for Defendants:*

SIR: Please take notice that the testimony of William B. Frue will be taken in the above cause, on behalf of said complainant, by deposition *de bene esse*, before Charles Flowers, a commissioner of said circuit court and a notary public, at his office, No. 19 Bank Block, in the city of Detroit, Wayne county, Michigan, on Wednesday, the 27th instant, at 9 o'clock in the forenoon; that the said William B. Frue is about to go out of the said district, and to a greater distance than one hundred miles from the said city of Detroit, the place of trial of said cause, before the time of trial thereof, and before the notice required in ordinary cases of the taking of the testimony of witnesses before a commissioner or master can be given.

Dated at Detroit, November 25th, 1878.

ASHLEY POND,
*Solicitor for Complainant.*

65 The Circuit Court of the United States for the Eastern District of Michigan. In Equity.

CHARLES H. PALMER *vs.* ELISHA T. LORING and another.

Pursuant to the notice hereto attached I, Charles Flowers, a commissioner of this court, proceeded to take the deposition of William B. Frue, at my office in the city of Detroit, on the 27th day of November, 1878, at 9 o'clock in the forenoon.

Hoyt Post and Ashley Pond were present on behalf of the complainant and C. I. Walker was present on behalf of the defendants.

Mr. Walker, on behalf of the defendants, here enters a general objection to the testimony of Mr. Frue for incompetency and irrelevancy, it being understood that such objection might be entered for the purpose of obviating the necessity of interposing distinct objections to special questions.

William B. Frue, being duly sworn, in answer to interrogatories proposed by Mr. Post, testified as follows, to wit:

Question. Where do you reside?

Answer. Detroit.

Q. What is your age?

A. I am over 40 years of age.

Q. You are about to leave this jurisdiction?

A. I have a contemplated trip in view.

Q. How soon?

A. I thought I might get away this evening, but I don't know whether it will be possible.

Q. To go how far, and to be gone how long?

A. About 2,000 miles, to be absent two months at least, probably longer.

Q. You are aquainted with the plaintiff and the defendant, Loring?

66 A. Yes, sir.

Q. What was your business in the year '68, and prior to that time?

A. I was manager of some mines in Lake Superior.

Q. Prior to June, 1868, state whether you and the complainant and the defendant Loring had been engaged in matters together?

A. We had to some extent.

Q. What was the general nature of your business?

A. I had made some purchases from the Mineral Lands Company, and Loring was desirous of taking an interest with me in the concern, and I allowed him to come in on equal footing with myself. That was in the purchase of 440 acres of land from the Mineral Land Company, and the purchase of a 40-acre lot which I had made from Sheldon & Douglass.

Q. Was Mr. Palmer also interested with you in these transactions?

A. Yes, sir; I let Mr. Palmer come in also in that purchase.

Q. Whether in the course of your dealings, between you and Mr. Palmer and Mr. Loring, in any of your transactions, it was customary for titles to stand in Mr. Loring as trustee, prior to that time?

Objected to as leading.

A. A portion of the land already mentioned, that is, a portion of the 440 acres of land, I deeded to Mr. Loring in trust, and he so held it, with the understanding however at the time, that the deed was not to be put on record.

Q. How was it about stock?

A. With stock— I always controlled my own stocks until 1867, and I supposed I did then, but such appeared not to be the case, because I never could get my stocks out of Mr. Loring's hands.

This answer is objected to as irresponsive.

Q. They were in his posession?

A. I took it for granted they were.

Q. You were acquainted with Mr. Thomas F. Mason, of New York?

67 A. Yes, sir.

Q. Did you see him at Houghton, Lake Superior, in 1868?

A. Yes, sir.

Q. About what time in the year?

A. It was along in June, probably about the 16th or 18th of June, 1868.

Q. Will you state what occurred between yourself and complainant and Mr. Mason, at Houghton, in June, '68, with reference to the purchase of certain lands on section 23, mentioned in the bill?

A. Mr. Palmer talked with me about an 80 and a 40-acre lot in that section, and wanted to know of me what I thought of its value. I was very well impressed with the locality of the land, and believed it would be valuable, and recommended the purchase of it, if a purchase could be effected, and he informed me that he had talked with Mr. Mason in regard to it; and we agreed, after consulting together, to enter into a contract for the purchase of the land. The contract was drawn up.

Q. Let me ask you here who had the title at that time?

A. The title was in Thomas F. Mason. I think there was another title to it, a tax title held by another party.

Q. But he was the party with whom this negotiation took place?

A. Yes, sir; we did not consider tax titles, although given by the State, as good for anything, by reason of the manner in which assessments were levied.

Q. Please state what you were about to state with reference to the contract?

A. Mr. Palmer and myself negotiated with Mr. Mason, and had a contract drawn up, but Mr. Mason declined to sign it, stating that he had a particular form of contract which he always used. We wanted to pay the money, that is the first payment on the land, at that time, but he declined to accept it until he arrived in New York.

It was understood that Mr. Loring would be requested to go
68 from Boston to New York to execute this contract with Mr. Mason, and Mason was instructed to execute it with him.

Q. Were the terms of the purchase agreed upon?

A. It was $20,000, payable in three payments, $5,000 down, and I think $7,500 after that in two separate payments—I am not sure of the exact amount, but I think the subsequent payments were equal.

Q. Will you state whether at that interview between Mason, Palmer and yourself, the entire terms of the contract were arranged?

A. The entire terms were arranged, that is the price for the land, $20,000, and the terms of payment, $5,000 on executing the contract, and the balance in two payments.

Q. Will you please state whether or not the negotiations progressed so far that an instrument was drawn up for the purpose of being executed?

A. Such an instrument was drawn, but as I have stated Mr. Mason refused to sign it, stating that he had a form of his own.

Q. Are you able to state in what particular the form to which he

referred, if it was stated, differed from the form which was prepared for execution?

A. I should say it did not differ in any respect from the form which was prepared for execution, except the form that he uses provides that in case of failure to make the other payments, the money already paid becomes forfeited.

Q. Do you know how many copies of the contract were prepared for signature at Houghton?

A. There were two copies prepared.

Q. Whether any objection was made by Mr. Mason as to the terms of the contract as expressed in this form which was prepared?

A. There was nothing except that he stated he had a form of his own, but the substance of the form would not differ.

Q. Please state what arrangement was made with Mr. Mason with reference to executing a contract at New York?

69 A. It was understood that he was to execute a contract with Mr. Loring, that is providing Mr. Loring had not left Boston for Lake Superior.

Q. He was expected there?

A. He was expected at Lake Superior, and if Mr. Palmer's letters could catch him at Boston, Mason was to execute the contract with Mr. Loring at New York. If the letter failed to catch Mr. Loring, then Mr. Mason was to send up the form of contract to be executed in Lake Superior.

Q. Mr. Mason was then on his way to New York?

A. He was about to start for New York.

Q. Did he then reside in New York?

A. That was his place of business.

Q. There was certain correspondence between Mr. Palmer and Mr. Loring with reference to this transaction at that time, was there not?

A. Yes, sir.

Q. Did you see that correspondence?

A. I have seen the letters that were written to Mr. Loring.

Q. Before they were mailed?

A. After the letters were written—I would not say letters—there was one letter.

Q. You may state, if you are able, the contents of the letter addressed by Mr. Palmer to Mr. Loring.

A. I have only a faint recollection of the contents of the letter that I allude to. The letter set forth the contract which we had made with Thomas F. Mason, and offering Loring an interest in it, that is to join us in the interest, and that the land was really contracted for at the time more especially for the purpose of consolidating it with the Ossipee mine than to hold it jointly between ourselves.

Q. You mean that was the purpose between yourself and Mr. Palmer?

A. That was set forth in the letter to Loring, that it was a

good purchase to be used to consolidate with the Ossipee mine.

70 Q. That was a mine in which yourself, Palmer and Loring were then interested?

A. Yes, sir, it was a mine in which we had floated a certain amount of stock, and for one, I felt very desirous to have it prove a success.

Q. Will you go on and state, as far as you can, the contents of the letter?

A. I cannot remember distinctly anything in the letter further than the outlines that I have stated.

Q. Do you remember whether anything was mentioned in the letter with reference to Mr. Loring going to New York in regard to executing the contract with Mason?

A. I don't remember that distinctly. There are certain things that my mind retains an impression of and about other things it fails.

Q. Do you recollect whether or not the letter was definite as to the interest of each?

A. No, I do not remember.

Q. Do you remember whether a copy of the contract was enclosed?

A. I do not.

Q. Or whether the terms of the contract with Mason were stated?

A. No.

Q. Do you recollect whether any despatch was sent from Mr. Palmer to Mr. Loring.

A. I recollect that there was one, if not two, despatches sent, but I do not remember the contents of the despatch.

Q. Whether you saw any despatches that were sent to Loring relating to this business?

A. Yes, sir.

Q. Did you see any reply or replies.

A. I saw despatches which were received in connection with the transaction, but I do not remember what the contents were.

71 Q. Do you recollect whether any, and if so, what arrangement was made by this letter or these letters from Mr. Palmer to Mr. Loring, with reference to the payment of the first five thousand dollars?

A. The first five thousand dollars on the land was paid by myself. In other words, I paid five thousand dollars which Mr. Loring had to pay at Houghton. I paid that amount for him and he was requested to make a like payment on the contract to Mr. Mason in New York.

Q. Is it your recollection that that was expressed in the letter to Mr. Loring from Mr. Palmer?

A. It was expressed in a despatch. Because he had to pay the money, and I think there was a despatch sent to that effect.

Q. That, you think, was a despatch from Mr. Palmer to Mr. Loring?

A. Yes, sir.

Q. Do you recollect whether a reply was received to that?

A. I do not.

Q. Do you recollect having seen any letter from Mr. Loring to Mr. Palmer about this, before his arrival at Houghton?

A. No; that is, I have no distinct recollection of it.

Q. Do you mean not a distinct recollection of its contents, or not a distinct recollection whether there was a letter?

A. There was a letter came from Mr. Loring, but in regard to these letters, I have no clear recollection.

Q. That letter was from Mr. Loring to Mr. Palmer, and not to yourself?

A. Yes, the correspondence was between Palmer and Loring.

Q. State whether you know yourself where that correspondence is, or whether it is in existence?

A. I do not know where it is.

Q. How soon after that was Mr. Loring at Houghton?

A. Mr. Loring arrived at Houghton along about the first of July, 1868.

Q. The July following this contract?

A. Yes, sir.

72 Q. Was an interview had there between Mr. Loring, Mr. Palmer, and yourself?

A. Yes, sir.

Q. In that interview was anything said about this purchase on section 23?

A. Yes, that was the chief point of conversation.

Q. At what place was that?

A. It occurred in my own private office, at Houghton.

Q. Be kind enough to state as fully as you can what took place at that interview?

A. We discussed the land contracted for. It was then understood that the land was bought upon contract, as it were, and the point that was discussed was the consolidating of it with the Ossipee mine, and Loring was opposed to that. He thought there was more money in it to hold it, and he remarked: "We own that jointly, and we will hold it for the present." And I was very much disappointed about the decision to hold it, because I wanted it to go in with the mine, as a number of my friends had become interested in the mine, and without that being consolidated with the Ossipee, the concern could not be a perfect success.

Q. Suppose you state briefly how this contract on 23 lay in reference to the Ossipee lands?

A. There was a 40 acre lot belonging to the Hecla mine joining the Ossipee, and north of that 40-acre lot came in one of the forties purchased under the contract.

Q. The Ossipee laying south of that?

A. Yes, sir. The 80 acres was the north half of the northwest quarter of section 23, so that that was off a considerable distance. I remember distinctly drawing a plan of the land at this interview, to which I refer, and showing how we might form a compromise with the Hecla mine, that is, made a trade off, on the land.

Q. Trade this 40 for the 40 lying between it and the Ossipee?

A. Yes, sir, more than that.

73 Q. Will you state what views Mr. Palmer expressed on that subject, in the presence of Mr. Loring?

A. Mr. Palmer favored my views with reference to consolidating.

Q. State what Mr. Loring's view was about it?

A. Mr. Loring's view was to hold the property jointly. His remark was: "We own this jointly, and we will hold it for the present."

Q. What was the result of the interview? Which of these conflicting views prevailed?

A. Loring carried the point, as it were, that is, his wishes were sustained.

Q. How long did this interview last?

A. For probably a couple of hours. It might not have been more than an hour and a half.

Q. Whether anything was stated at that interview by Mr. Loring or between you as to the value of this purchase?

A. As a matter of course we talked about it being valuable. It was considered a great bargain at $20,000.

Q. In this interview was any value put upon it between you?

A. I am not sure about that. I can't remember distinctly, but we rather felt pleased over the purchase.

Q. State whether you afterwards saw the contract which was executed between Mr. Loring and Mr. Mason?

A. I saw the contract, which I suppose was the contract that was executed between Mr. Loring and Mr. Mason. The paper which I supposed was the original came into my possession some time in April, 1869.

Q. When you saw that contract and observed the date, whether you are able to state how the date of the contract made between Loring and Mason compared with the date of the agreement or negotiation which you and Palmer had made with Mason at Houghton?

A. I did not notice it at the time. I have since.

Q. What are you able to state?

A. The date of the contract was the 18th of June. It was

74 the same date on which we agreed and arranged at Houghton, although the contract was really executed later in New York.

Q. Having seen the terms of that contract as made between Mr. Loring and Mr. Mason, how did it compare as actually written out with the terms which you had negotiated at Houghton?

A. The contract was for $20,000 the same as that at Houghton,

and the payment was at three different times, at the execution of the contract and at two separate times after.

Q. Agreeing with the times?

A. That I do not recollect. In substance it was the same as the contract that was blocked out at Houghton, in regard to the price and manner of payment.

Q. You speak of a contract being blocked out. Was not a contract fully drawn ready for execution?

A. What I mean was, it was drawn but not signed. That is what I mean by the term blocked.

Q. You say this contract came into your possession in April, 1869, or what you supposed to have been the contract?

A. Yes, sir.

Q. Are you able to state whether the paper now shown you is the document to which you refer?

A. That is the paper.

The paper is offered in evidence and marked Exhibit A.

Q. Will you state how you received Exhibit A?

A. It was sent by Mr. Palmer to me by letter. I had a letter from Mr. Palmer stating that he would send me the document, and I received the document in compliance therewith.

Q. Will you state whether the paper now shown you is the letter which you first referred to in your testimony?

A. This is the letter which I referred to which informed me that Mr. Palmer would send it.

Q. That you received in due course of mail, after its date?

A. I should say so. Our mails sometimes are not very regular.

75 The letter is marked Exhibit "C," and is offered in evidence.

Q. Will you state whether the letter now shown you is the letter which enclosed the agreement, which has been marked Exhibit "A"?

A. This is the letter which accompanied it.

The letter last referred to marked Exhibit "D," and is offered in evidence.

Q. That was received in due course of mail?

A. Yes, sir.

Q. At the time this contract, Exhibit "A," was received by you in that letter, will you state whether the endorsement at the foot of the contract which now appears upon it was there, signed by Mr. Loring?

A. Yes, sir, it was.

The endorsement upon the contract, Exhibit "A," was marked Exhibit "B," and is offered in evidence.

Q. Will you state how Mr. Palmer came to send you that document?

A. I had written Mr. Palmer that I wanted something to show my interest in that property; and I was very much exercised at the

time from a letter that had come from Mr. Loring, which almost convinced me that Mr. Loring was about to grasp everything and hold it within his hand, without regard to the rights of others, and I—

Objected to as irrelevant.

Q. Proceed.

A. I had written, wanting to get something to represent my interest.

Q. State how much at that time you had paid towards the purchase price?

A. I had paid in money five thousand dollars.

Q. That was the first payment?

A. Yes, sir.

Q. Had you paid specifically on this contract any other moneys than that at that time.

A. No.

76 Q. Well, how came you to write to Mr. Palmer about it? Had there been any discussion between you and Mr. Palmer as to Mr. Loring?

A. Some letters had passed between us. I had been writing to Mr. Palmer.

Q. Had you had any talk about it?

A. Not at that time. I don't think we had any talk about it, because we could not have had.

Q. You may state, if you please, fully, what at this time were your feelings toward Mr. Loring, as to whether they were distrustful or otherwise?

A. Loring was on the lake in the fall of 1868—

Objected to as not responsive.

A. And being pressed for money, he wanted something by which he could raise money, and I had passed over to him 100 shares of Calumet stock, with the perfect understanding that it was only to be used as collateral; that the stock was not to be placed in jeopardy; that he was to protect it; but I learned afterwards that he had sold that stock within 14 days from the time he received it, and I became very distrustful of the man. I had lost all confidence in him.

Q. Whether at this time Mr. Palmer shared your distrust of Mr. Loring, as far as you could judge from your own intercourse with him?

A. Judging from the correspondence that passed between Mr. Palmer and myself, he was still of the opinion that Loring would act honestly and fairly; and I would have commenced proceedings against Mr. Loring much earlier than I did had not Mr. Palmer kept advising me to keep cool, and that he could make, or he thought he could make, Loring do what was right.

Q. Whether that had anything to do with your writing to Mr. Palmer with reference to procuring from Mr. Loring this something to represent your interest?

A. It had something to do with it, because I felt that my
77 entire property was in the hands of Mr. Loring, beyond my control, and it was to get something to represent it that prompted me to write to Mr. Palmer.

Q. You say Mr. Loring was up at Lake Superior in the fall of 1868; in October, was it not?

A. Yes, sir.

Q. From there where did he go?

A. I don't know where he went. I was sick at the time.

Q. Whether he returned to Boston?

A. I suppose he returned to Boston.

Q. Where did Mr. Palmer go?

A. I do not know.

Q. Where was he at the time of writing these letters to you enclosing this contract?

A. The letters were mailed at Pontiac, I think.

Q. Do you know, or did you know, whether he was at Boston at about this time, or had access to Mr. Loring personally at the time of these applications to him?

A. I do not know.

Q. Don't you recollect whether Mr. Palmer was in New York and Boston about this time in the winter and spring of 1868–9?

Objected to as leading.

Q. I call your attention to the issue of the South Pewabic bonds, whether that refreshes your recollection about it?

A. The bonds of the South Pewabic were issued in the fall and winter of 1868–9.

Q. Do you know whether, with reference to that, Mr. Palmer was at Boston or New York?

A. I believe I received letters from Mr. Palmer dated in Boston, but being on Lake Superior, I cannot say positively whether he was there.

Q. I will ask you whether you received the letter now shown you from Mr. Palmer—letter dated May 30th, 1869?

A. Yes, sir; I received that letter from Mr. Palmer. It came to me by the regular course of mail.

78 Q. Do you know whether it was Mr. Palmer's handwriting?

A. It is Mr. Palmer's handwriting?

Letter is offered in evidence and marked Exhibit E.

Q. You may state whether, subsequent to receiving this contract, Exhibit A, from Mr. Palmer, anything more transpired between you and Mr. Loring with reference to that land, or your interest in it.

A. Early in the spring or summer, in May or June, 1869, Mr. Loring was at my place at Houghton and executed a deed for an undivided quarter interest.

Q. State whether at the same time any other contract was made between you and him?

A. There was a contract drawn up by the order of Mr. Loring,

which bound each of us one to the other in regard to selling. I would state with regard to that contract that I was compelled to execute the contract very much against my own will. In order to get an interest I was compelled to do anything that Mr. Loring should dictate.

Q. That was at the time the deed was given?

A. It was before the deed was passed to me. I had to sign this contract—was forced into signing it.

Q. Was that made a condition by Mr. Loring of your receiving the deed?

A. Yes, sir; it was a condition placing me, as it were, at the time, as I viewed it, in the power of Mr. Loring.

Q. Whether, when you received this contract, Exhibit A, with the endorsement Exhibit B upon it, that was in accordance with your understanding of what your interest was or was to have been in this purchase?

A. It was not; at the time of the purchase, or shortly after that, it was the understanding that each held a third interest.

Q. When you speak of shortly after that, at what time do you refer?

A. At the time Loring came up there in July, 1868.

79 *Cross-examination.*

By Mr. WALKER:

Q. You have had a very bitter controversy with Mr. Loring, have you not?

A. I don't know; a man can contend for his rights without being bitter; Mr. Loring has been a guest of mine.

Q. You say you have not had a bitter controversy with him?

A. Not in my way of acting.

Q. You have two or three cases in litigation with him, have you not?

A. Yes, sir.

Q. In that litigation Mr. Palmer is your most important witness, is he not?

A. No, sir.

Q. He is an important witness, is he not?

A. He is now, but he was not; Major Sibley was my most important witness.

Q. Was Mr. Palmer not an important witness in the United States circuit court?

A. In my way of thinking he was not the most important witness.

Q. I am asking whether he was not an important witness?

A. He was.

Q. Is he not an important witness in suits that you have now pending with Mr. Loring?

A. Yes, sir.

Q. How did you pay the $5,000 that you paid on this section 23?

A. Paid it in the Houghton bank.

Q. To whom?

A. That is, the money went to Mr. Edwards. Mr. Loring had purchased what was known as the Adams front from Mr. Edwards and Mr. Walter W. Palmer, or rather Edwards and Palmer were interested in this front, and Edwards purchased from Palmer and sold to Loring. The deed called for that payment of money, and Loring was to pay for it.

80 Q. From Loring to Edwards?

A. Yes, sir.

Q. And Edwards was to pay it to Palmer?

A. Edwards had bought the land from Palmer and afterwards sold the land to Loring and Loring was to pay Edwards.

Q. And you paid Edwards?

A. I paid Edwards, or the bank rather; that is, the instrument of the agreement was in the bank.

Q. When was this payment made?

A. It was made in June, I think; either June or the first of July. I think it was probably paid a little ahead of time. It was not probably due until July, but it was paid to make the thing equal; that is to justify Loring in paying the $5,000 on the contract.

Q. Was it paid before you knew that Loring had completed the contract with Mason?

A. I am not sure; I think it was. I think there was a despatch sent to Loring to that effect.

Q. That you are not sure of?

A. I would state positively there was.

Q. That despatch was sent before you knew the contract had been made with Mason?

A. The contract was made with Mason.

Q. I mean signed.

A. Yes; it was before we were aware that the contract was signed.

Q. What authority had you from Mr. Loring to pay this $5,000?

A. The purchase and everything was made through me, that is I was entrusted with the purchase and instructed in regard to having the deed, and everything, I might say, connected with the transaction was entrusted to me through Loring. Loring was in Boston and I was at Houghton, and the transaction was at Houghton, that is, Edwards lived there and the land was there.

81 Mr. POND. As I understand it you acted for Loring in the transaction. Is that it?

A. Yes, sir.

Mr. WALKER. The question I asked was what authority you had to act for Loring?

A. I do not know what authority.

*Re-direct.*

By Mr. POND:

Q. As I understand you advised Loring that you had paid this $5,000, and that it was to be applied on this purchase of 23?

A. Mr. Loring was advised by Mr. Palmer. He was the one that did the correspondence.

Q. Did Mr. Loring take the benefit of that payment of $5,000.

A. I believe so.

Q. Did he ever make any question about your having paid it; or did he ever find any fault with your having paid it?

A. No.

Q. As I understand, that deed was in the bank to be delivered on the payment of that $5,000?

A. That was the fact.

Q. You paid the $5,000 and took the deed, and Loring took the benefit of the deed?

A. Yes, sir.

Q. You have stated that Mr. Loring afterward conveyed to you a quarter interest in this section 23. Will you state what the consideration of that conveyance to you was, what you paid to Loring in connection with the purchase of this land on 23?

A. I don't remember whether the conveyance was for one dollar or five thousand dollars consideration.

Q. How did you pay for the interest that was conveyed to you in 23?

A. I paid the $5,000.

Q. This very $5,000 which you have spoken of?

82 A. Yes, sir.

Q. And made no other payments specifically?

A. Made no other payment.

When the answer at the top of page nine was read to him, the witness explained as follows: "I mean to say this, I don't want it understood in saying that he remarked, 'we own that jointly,' don't want it understood that he further added, 'we are equally interested,' because I don't remember his stating that in that connection. The words, 'we own this jointly,' and, 'we will hold it.' I don't remember the other coming in there, the equal."

After the foregoing testimony was read to the witness, he stated that he did not know what he said was being taken, and that he did not want it to appear in that way; but Mr. Walker insisted that it should so stand.

The witness was then further examined by Mr. Walker, as follows:

Q. Do you mean to say that it was understood that Mr. Palmer was to have a third interest without any reference as to his paying for it?

A. I don't remember anything being stated about how the prop-

erty was to be paid for, and by whom. We were, as it were, dividing the spoils before we had paid for them.

Q. I am not asking what you said, but yon have testified as to the understanding; how did you understand that matter, was Mr. Palmer to have a third interest without his paying for it?

A. I don't remember any such understanding.

W. B. FRUE.

Exhibits A and B are the same as Exhibit A attached to the bill of complaint, and are not reprinted here.

83 EXHIBIT C.

I will send a paper for one-quarter of 23 paid by you, tomorrow.

PONTIAC, *April* 5, 1869.

W. B. FRUE, ESQ.,

DEAR SIR: I received a letter from you, dated March 6th, which came to hand while I was away from home. To-day I had a telegram in relation to pledging stock in Ossipee. I never had any authority for pledging your stock, nor ever dreamed of anything of the kind, and I do not know what it means, unless Mr. Loring, like the Adams front, intends to come another game on us. I have from Mr. Loring a written statement in regard to a quarter interest in 23, which I asked him to make out to you. In this paper he mixes the quarter paid by you at Houghton, with my interest, and seeks to put me off with a quarter interest, when the property shall be sold. In regard to the quarter paid by you at Houghton, I had notified Loring of this distinctly in October last, when at your house, and have written him since to the same effect, so that he knows beyond any mistake, that you are entitled to a quarter on account of this payment. I have myself paid Loring since I came down, $23,000, having sold my smelting stock at a great sacrifice in order to pay my full interest in 23. Mr. Loring did mean to saddle me with one-half the Adams front, and take all of 23, but this was so outrageous that he had to abandon it. He did try to make me pay for all the Ossipee stock that you gave away, but so far I have been able to keep him from so wrong a thing. How long I can do this, I do not know.

In regard to O. stock, I telegraphed you that there was nothing of the kind. All your money was passed to Mr. Loring, and he took all the property, and the parties to each interest as assigned, and delivered the stock to all as paid for. If Mr. Loring claims that I pledged any one's interest, he claims what is not true, what I never thought of, and what he cannot maintain. I am very
84 anxious that you and I should act together in perfect accord in all our matters. This is our only safety, owing to Mr. Loring's peculiarities in all cases of difficulty, for he seems to have no regard to right and wrong when he thinks anything may not turn out favorably, or for his own interest. In difficulty, Loring is

hell upon his associates—he does not seem to recognize that they have any rights whatever. You have not written me much of late, and I have not written you, as I have been away from home. I think I can say, if we manage well, we can come out right in the end.

Loring has no right to your stock in Ossipee, if your assessments are all paid, and I would insist upon his giving them up.

I have nothing from you about resigning. What does it mean?

Will S. P. make a good paying mine sure? Write me at once all about matters and things.

Truly yours,

CHARLES H. PALMER.

EXHIBIT D.

APRIL 6, 1869.

W. B. FRUE, Esq.

DEAR SIR: I send you the paper referred to in my last. I do not think it is necessary, as Mr. Loring is fully aware that you paid for him at Houghton $5,000, which was to apply on the purchase of 23. As you are entitled to this independent of any interest of mine in the hands of Mr. Loring, I have tried to make this much sure to you in what I have said in this paper. You will understand that your interest in 23 has nothing to do with mine. Mr. Loring's idea is, no doubt, as I made the contract, to limit me to a quarter. You will insist, as you paid the $5,000 for Mr. Loring upon his acknowledging it to you, and taking his agreement to that
85 effect. I want you to write me fully all your plans, as I am with you in bad as well as good luck, always the same.

Can you do anything for Clare this summer? It seems to me by all working together we shall in the end come out right. Write me as soon as you receive this. Mr. L. has no more right to your Ossipee stock than a man in the moon. He must be insane to think that he has. I have written to him on this subject. I want to hear fully from you. If I have not written you oftener of late it is because I have been much from home. It seems to me that the north half of 29 must be connected with Ossipee in time.

Truly, CHAS. H. PALMER.

EXHIBIT E.

PONTIAC, *May* 30, 1869.

W. B. FRUE, Esq.

DEAR SIR: I received your two telegrams and understood them. At the same time I had one from E. T. to meet him at Detroit. I saw him on Saturday, and had a long talk with him. Mr. Loring has mixed up the accounts, and I think is in error. In my account he is wrong $10,000 against me, which he will see. This has led him to feel uncertain. In all my own matters he has abundant security, and I shall try and have him settle with you and the boys

correctly. You must not begin any suit against him until he has time to look over the account, and you and he compare accounts.

This position, that he holds your stock for the debt of others, is entirely wrong. There is nothing to sustain it. All this he assumes himself without any authority, and, from the nature of the transaction, is absurd, so that you need not have any fear; all your interests are entirely safe. In regard to the money he may owe you I know nothing. He and you are the only ones to know this, but it will not be difficult to get at the truth.

86 If we ever get out safe we must not get into trouble between ourselves. You must not then begin suit till all else fails.

I repeat, I believe we can have Mr. Loring do what is right, and I think you will soon get your stocks. I write this letter in haste, but shall soon write you again.

I believe Mr. Loring wants to be friendly and to have no misunderstanding with us, but in his disappointments he has been led to take a selfish view of matters.

It will be disastrous to all our interests to move as you have contemplated, till such time as you shall be sure that you have no other means of getting justice done.

In the beginning I told Mr. Loring that he should credit your money direct to you—that no one could understand it unless he did so. I said much to him on this matter; but as you know, he always has his own way, and in this case he did it without my consent, and he told me he did it for his own convenience alone.

Be sure not to do anything without advising me and getting my opinion in the matter.

Truly yours,

CHAS H. PALMER.

Shall I send Clare up?

87 In the Circuit Court of the United States for the Eastern District of Michigan. In Equity.

CHARLES H. PALMER, Complainant,

*vs.*

ELISHA T. LORING and CHARLES A. WELCH, Defendants.

It is stipulated that the statement of Thomas F. Mason, together with the exhibits annexed thereto, may be used in evidence upon the hearing of the above-entitled cause, in the same manner, and with like effect as testimony, as though regularly taken and verified, and such statement and such exhibits shall be subject to objection only for relevancy and competency.

Dated, December 7, 1878.

ASHLEY POUND,
*Solicitor for Complainant.*
C. I. WALKER,
*Solicitor for Defendants.*

Circuit Court of the United States for the Eastern District of Michigan. In Equity.

CHARLES H. PALMER, Complainant,

*vs.*

ELISHA T. LORING AND CHARLES A. WELCH, Defendants.

*Deposition of Thomas F. Mason.*

No. 4 EXCHANGE COURT, NEW YORK, *Dec.* 7, 1878.

Thomas F. Mason, a witness produced on the part of the complainant under stipulation hereto annexed, being duly sworn, testified as follows:

88 Examined by Mr. SEAGER:

Q. What is your full name?
A. Thomas F. Mason.
Q. Where do you reside?
A. In New York.
Q. Are you acquainted with the parties to this suit?
A. Yes, I know them.
Q. How long have you been acquainted with them?
A. Eighteen or twenty years, I don't know exactly; it is a long time.
Q. Did you formerly own the property in controversy in section 23?
A. I did.
Q. Do you now own it?
A. No, I do not.
Q. Will you state when and to whom you disposed of it?
A. I will have to refer to the contract. (Referring.) It was in June, 1868. I met Mr. Palmer at Portage Lake, and he proposed to buy the property at the price I asked for it, and when I returned home I made a contract with Mr. Loring for the payment and for the conveyance of the property.
Q. What was the arrangement made at the Lake between Mr. Palmer and yourself; state it as fully as you remember it?
A. That Mr. Loring would make the contract and pay $5,000 at the time of making the contract—the balance to be paid in equal or about equal installments in two payments six and eight months thereafter.
Q. Was any one with Mr. Palmer when this arrangement was made?
A. I think Mr. Frue was with him at my first interview with him.
Q. Do you remember whether you at the time made any memorandum of the terms of the sale when at the lake?
A. No, I do not remember of making any.
89 Q. Can you fix the date when this arrangement was made upon the lake?

A. I fix the date by the date of the contract, which was, I think, the 18th of June; I have no other means of fixing it except that.

Q. It is the fact, is it not, that that contract was ante-dated when drawn here in New York to correspond with the time of making the arrangement at the lake?

A. Yes, sir, I think so; to make it cash and interest from that date.

Q. When did you first have anything to do with Mr. Loring in reference to the property?

A. After I returned.

Q. Can you fix that date?

A. No, I cannot fix it any other than from the date of the receipt of the payment.

Q. How was that payment made?

A. That payment was made, I find by my check book, by a check from T. Henry Perkins.

Q. To whom was the contract delivered by you, to Mr. Perkins or Mr. Loring?

A. I had foagotten all about that, but come to look at the contract I see that it is filled in in Mr. Perkins' handwriting.

Q. What portion of it is filled in?

A. E. T. Loring, trustee.

Q. The name of the party of the second part?

A. The name of the party of the second part. From that I conclude (and I think it is corroborated by my letter sending it) that I sent the contract to Boston to Mr. Perkins, to be delivered on the payment of $5,000.

Q. Have you letter-press copies of your letters during that time—the month of June?

A. Most of them, I presume.

Q. Have you a letter-press copy of the letter sent to Mr. Perkins?

A. I think so. June 26, 1868, a letter to Mr. Perkins.

Complainant's counsel offers the letter in evidence.

90 It is marked "*Complainant's Exhibit A.*" A copy of the same is hereto attached.

Q. Had you ever had any conversation with Mr. Loring, or any bargain with him in relation to this property prior to sending this letter?

A. Not previous to that, no. I don't remember whether I did see him or not; I don't know whether he came here or whether I saw him.

Q. But to your recollection you never had?

A. To my recollection; unless there was some circumstance to change my recollection; my impression, if it were not for the letters, would be that Mr. Loring did come here and complete that arrangement; but it seems that he didn't.

Q. Did you make any entry of the receipt of that payment at the time it was made?

A. Yes, I did.

Q. Will you please turn to that entry?

A. "June 29, 1868, T. Henry Perkins $5,000 for payment on Palmer contract."

Q. That is the entry of the payment, which entry was made by you at the time it was received?

A. That was the entry at the time I deposited it.

Q. This contract you say you are satisfied was prepared here, leaving blank simply the name of the party of the second part?

A. Yes, I think that is all.

Q. And that was inserted at Boston?

A. That was inserted at Boston.

Q. Do you know William Hart Smith?

A. Yes.

Q. What business relations did you have with him in 1868?

A. He was treasurer of the Quincy Mining Company, of which I was president.

Q. Do you know Mr. Loring's signature? (handing to witness a letter purporting to be from Mr. Loring to W. Hart Smith.)

91 A. I think so; I believe that is his signature.

Complainant's counsel offers the letter in evidence.

It is marked "*Complainant's Exhibit B.*" A copy of the same is hereto annexed.

Q. Did you receive any letters from Mr. Palmer about the time of this transaction?

A. About the time I returned from the lake, I think.

Q. Here are the letters which you produce, are they?

A. Yes, sir.

Complainant's counsel offers the two letters in evidence.

They are marked "*Complainant's Exhibits C and D.*"

Copies of the same are hereto attached.

Q. When was the balance paid on this contract, and by whom?

A. It was paid at the time called for, six and eight months from the date.

Q. What date would that be?

A. The 18th of December, 1868, and the 18th of February, 1869.

Q. Have you entries of those payments?

A. I have, yes, sir.

Q. Please read them.

A. "December 18, 1868, E. T. Loring, trustee, $8,025;" "February 18, 1869, E. T. Loring, in trust, $7,000;" "February 20, 1869, the same, $587.50."

Q. How were those last payments made?

A. That I don't know—only from the entries here. The probability is that they were Boston drafts on some New York bank.

Q. Received by you by mail or from Mr. Loring in person?

A. By mail, I presume; it must have been by mail.

Q. Have you preserved any other letters that you received from Mr. Loring?

A. No other letters that I can find.

Q. Have you made search for them?

A. I have made search for them; and these few letters in connection with this transaction happened to be filed with the
92 contract, and I could find no other letters in relation to the transaction.

Q. Is it your custom to keep your letters, or to destroy them after a time?

A. For a while, but destroy them after a time—only my private business.

At the request of counsel, Mr. Mason produces letter-press copies of letters, as follows: From Mr. Mason to Mr. Loring, December 18, 1868; the same to the same, February 18, 1869; the same to the same, February 20, 1869.

Complainant's counsel offers the said letters in evidence.

They are marked, respectively, "*Complainant's Exhibits E, F, and G.*" Copies of the same are hereto annexed.

Cross-examined by Mr. C. I. WALKER:

Q. Did you not write a letter in relation to this matter the latter part of January?

A. I could not tell you without I find it in my letter-book. Yes, sir, January 30, 1869.

Defendants' counsel offers the said letters in evidence.

It is marked *Defendants' Exhibit No.* 1." A copy of the same is hereto annexed.

Q. Did you not, in answer to that, receive a letter from Mr. Loring dated February 1st, 1869?

A. That I can't say; I presume that I must have received a letter, but, as I stated before, I don't find any other of Mr. Palmer's or Mr. Loring's letters in relation to this matter, because, as I suppose, they are all destroyed.

Q. Did you not afterwards, and early in February, before the payment of the 18th of February, write another letter to Mr. Loring upon this matter?

A. There is one, February 2d.

Defendants' counsel offer the said letter in evidence.

It is marked "*Defendants' Exhibit No.* 2." A copy of the same is hereto annexed.

MR. WALKER: That will probably enable you to say whether you received one February 1st.

93 Q. Did you not receive another letter from Mr. Loring, on this matter, about the 15th or 16th of February?

A. I don't know, really, for I can't find any other of those letters.

Q. Please see whether you did not write to him on the 16th or 17th of February?

A. The 15th of February.

Defendants' counsel offers the said letter in evidence.

It is marked "*Defendants' Exhibit No.* 3." A copy of the same is hereto annexed.

Q. Was not that letter written in response to a letter received from Mr. Loring?

A. I have every reason to suppose that it was. It don't say, as usual, "your letter received."

Q. When was it that Mr. Palmer called upon you to get an extension of time?

A. I really haven't any recollection by which I could give it.

Q. As to date?

A. As to date; I don't know as I should have recollected it at all had it not been for these letters; but there must have been something of that kind, or it would not have been expressed in these letters; so that I presume he did call on me, desiring to have the time of payment extended.

Q. Don't you recollect that he wanted that extension as a personal favor to himself, as he expected to furnish the money that was to be paid?

A. I have no recollection of that; I couldn't say; it is a fair presumption; if he called upon me in relation to that, I have no doubt that that was the argument that he used.

THOS. F. MASON.

94 Copies of exhibits put in evidence by complainant and defendants:

*Complainant's Exhibit "A."*

JUNE 26*th*, 1868.

T. HENRY PERKINS, ESQ.

DR. SIR: I send herewith contract for sale of 120 acres of land, which I wish you to [——] Mr. Loring, and have him execute, either for himself or Mr. Palmer, (I made the trade with Palmer,) fill in the name of whichever Mr. L. desires, and deliver over to Mr. Loring upon his paying you $5,000.

If Mr. Loring is not prepared to comply, you will not press the matter, but return the papers. I was tempted to sell by the offer, but perhaps I made a mistake; probably I might obtain more from the Hecla Company by holding long enough.

Mr. Palmer requested the transaction kept private for the present, so you will please say nothing about it.

I shall see you before long, and will then report on mining matters; there is nothing requiring haste.

I see water power is about 18; has there been a dividend making the difference from 22 or 23?

Truly yours, THOS. F. MASON.

*Complainant's Exhibit "B."*

[Printed heading.]

OFFICE OF THE SOUTH PEWABIC COPPER COMPANY,
31 KILBY STREET,
BOSTON, *June* 25, 1868.

W. HART SMITH, ESQ.,
*Treas., New York.*

DEAR SIR: I received letter this morning from Mr. Palmer, who is very desirous I should see Mr. Mason before leaving for
95 the Lake, which I intended doing on Saturday, therefore telegraphed you this morning, requesting to be advised as soon Mr. Mason returned, which I will thank you to do by telegraph at the *earliest* date, as this may enable me to leave here on Saturday evening's boat and see Mr. Mason on Monday morning, if not before.

Truly yours, E. T. LORING.

*Complainant's Exhibit "C."*

[Printed heading.]

KEARSARGE MINING COMPANY,
CALUMET, MICH., *June 27th*, 1868.

T. F. MASON, ESQ.,

DEAR SIR: On the day you left I wrote Mr. Loring two letters informing him of my contract with you, and requesting him, upon their receipt, to go to N. Y. and execute the contract and pay you the $5,000. One of those letters went by the steamer N. West, and the other by mail Saturday morning.

On Monday, the 22d, I telegraphed Mr. Loring that I had paid here for him $5,000, and asking him, upon the receipt of either of my letters, to pay the same amount to you and execute my contract with you. On Friday I telegraphed Mr. Loring again and asked a reply. The line has been down some of the time and has not worked well, and I have had no reply. Mr. Loring, I knew, was soon to start for the Lake, and hence I was anxious that this business should be finished before he left. I trust you will send the papers to me, as was understood when you left, in case from any cause Mr. Loring should fail to execute the contract. If there should be any delay I will pay interest on the $5,000, so as to make it the same as $20,000 from the day the contract was made. If the papers come up to me to execute, the $5,000 will be ready as soon as they come.

Truly yours, CHAS. H. PALMER.

96 *Complainant's Exhibit "D."*

[Printed heading.]

KEARSARGE MINING COMPANY,
CALUMET, MICH., *June* 29, 1868.

THOMAS F. MASON, Esq.

DEAR SIR: This morning I received a telegram dated the 27th, in which he says the contract is closed and that he was to start for the lake on that day.

I had never said anything to Mr. Loring in regard to the purchase of this land, and I felt, in consequence, some anxiety in regard to it. I am much obliged to you, and while I think the sale is a good one for you, I also think the purchase is a good one for us. I would not have you mention the object which you divined we had in purchasing it.

Yours truly, CHAS. H. PALMER.

*Complainant's Exhibit "E."*

DECEMBER 18TH, '68.

E. T. LORING, Esq.

DR. SIR: Your letter of 17th, covering draft as stated, is received, and I have endorsed the amount, eight thousand and twenty-five dollars, (8,025 dollars,) on our contract dated June 18th, 1868.

Truly yours, THOS. F. MASON.

*Complainant's Exhibit "F."*

FEBRUARY 18, '69.

E. T. LORING, Esq.

DR. SIR: Your letter of yesterday received, enclosing draft for seven thousand (7,000) dollars on account of contract for purchase of lands dated June 18, 1868.

97 Herewith I send you statement of the transaction, showing a balance due me of $587.50, upon receipt of which I will send you the deed.

Truly yours, THOS. F. MASON.

*Statement.*

E. T. Loring, Esq., in trust, in account with Thos. F. Mason.

| | | |
|---|---|---|
| 1868. | | |
| June 18. | To purchase of land | $20,000 00 |
| Dec. 18. | " 6 mos. interest on $15,000 | 525 00 |
| 1869. | | |
| Feb'y 18. | " 2 " " " 7,500 | 87 50 |
| | | $20,612 50 |

| 1868. | | Cr. | | |
|---|---|---|---|---|
| June 18. | By cash | | $5,000 00 | |
| Dec. 18. | " " | | 8,025 00 | |
| 1869. | | | | |
| Feb'y 18. | " " | | 7,000 00 | 20,025 00 |
| | Balance due T. F. M. | | | $587 50 |

E. E.

New York, Feb'y 18, '69.

*Complainant's Exhibit "G."*

FEBRUARY 28, '69.

E. T. LORING, Esq.,

DR. SIR: Your letter of 19th, covering bank draft on New York for $587.50, received.

Herewith I send you the deed as called for by our contract dated June 18, 1868, together with a statement of account and amount paid.

Truly yours, THOS. F. MASON.

98 *Defendant's Exhibit "No. 1."*

JANUARY 30, '69.

E. T. LORING, Esq.

DR. SIR: I received a letter from Mr. Palmer requesting me to write you my decision on his request that I extend for three months the payment on contract falling due 18th February, and which is, that I would prefer not to do so.

Truly yours, THOS. F. MASON.

*Defendant's Exhibit " No. 2."*

FEBRUARY 2D, '69.

E. T. LORING, Esq.

DR. SIR: Your letter received. I gave Mr. Palmer no encouragement that I would extend the payment further than to say I would *decide* whether I would do so or not when he returned from Boston. I wrote you, at his request, to say I decided to not extend it.

Truly yours, THOS. F. MASON.

*Defendant's Exhibit " No. 3."*

FEBRUARY 15, '69.

E. T. LORING, Esq.

DR. SIR: As you requested, I write to say that I am not prepared to consider favorably Mr. Palmer's proposition at this time, and will, as you desired, have deed of the lands in section 23 ready for you on the 18th inst.

Truly yours, THOS. F. MASON.

99 In the Circuit Court of the United States for the Eastern District of Michigan. In Equity.

CHARLES H. PALMER, Complainant,
*vs.*
ELISHA T. LORING and CHARLES A. WELCH, Defendants.

The depositions of Charles H. Palmer, the complainant, and Virginia Palmer, taken before me, Charles Flowers, a commissioner of the circuit court of the United States, by consent of the parties hereto, on the 19th of December, 1878.

Present, Hoyt Post and Mr. Seager, for the complainant; C. I. Walker, for the defendants.

The testimony is taken subject to objections for relevancy and competency.

Charles H. Palmer, being duly sworn, doth depose and say, in answer to interrogatories proposed by Mr. Post, as follows, to wit:

Q. You are the complainant in this case?

A. Yes, sir.

Q. Where do you reside?

A. In Pontiac.

Q. How long have you lived there?

A. Since 1852.

Q. State whether on and prior to June, 1868, you had interests in Lake Superior, and had investments there?

A. Yes, sir.

Q. Whether you had investments there jointly with the defendant, Loring, and William B. Frue?

A. I had interests with them, commencing in 1854.

Q. You may state what, in general terms, your several proportions of those investments were from about the year 1865, between you three?

100 A. From 1865 they were generally the same, equal interests. When we entered into the interest, we entered in equally.

Q. You may state what the general nature of those investments was?

A. They were in mining property and stock.

Q. How were the stocks held?

Objected to as immaterial.

A. They were generally in Mr. Loring's name.

Q. State whether on or about June 18th, 1868, you had any negotiations with one Thomas F. Mason, with reference to lands in 23, described in the bill?

A. I made a contract with Mr. Mason at Houghton.

Q. You may state if you please the terms of that contract?

A. The contract was for $20,000. $5,000 to be paid down and the balance in two equal payments, six and eight months, with interest, with right to pay at any time before maturity.

Q. Who negotiated the contract?

A. I negotiated the contract.

Q. On behalf of whom was the original negotiation?

A. On behalf of myself, Loring and Captain Frue—in the first place Mr. Frue and myself.

Q. State whether a contract was drawn for signature?

A. It was drawn ready for signature.

Q. Was this negotiation and purchase with the knowledge and assent of Mr. Frue at the time?

A. It was.

Q. You stated that the contract was drawn for signature?

A. Yes, sir; I expected at the time it would be signed.

Q. It was not signed there?

A. No, sir.

Q. What was the reason?

A. The reason was that after I had got it ready to sign, Mr. Mason stated he had a form of his own which he preferred to use.

101 Q. Did he make any explanation in what particular it differed?

A. He said his form contained a clause of forfeiture, I think; there was to be no change in the terms.

Q. You may state what arrangement was made between you and Frue and Mason, if any, with reference to the further execution of the contract?

A. I said that I would send Mr. Loring to execute the contract.

Q. Send him where?

A. Send him to New York.

Q. Was Mason on his way to New York at this time?

A. He was about leaving.

Q. And did leave when?

A. He left right off; he left probably the evening of the 18th, the date of the contract.

Q. You may state what arrangement was made with Mr. Mason, with reference to the further execution of the contract?

A. I stated to him that Mr. Loring would be interested. When he declined to execute the contract, I stated to him that Mr. Loring would be interested with us, if Mr. Loring chose to be so.

Q. Can you state what the arrangement was?

A. The arrangement was that Mr. Loring should go over to New York and execute the contract, or that Mr. Mason should send the contract over to Boston to be executed, and if there was any failure, Mr. Mason was to return it to Houghton.

Q. You may state whether at the conclusion of this arrangement you wrote any letter to Mr. Loring in relation to it?

A. I wrote to Mr. Loring in reference to it.

A letter of date June 18th, 1868, is produced by the defendant on notice.

Q. You may state whether the letter now shown you is the letter you wrote to Mr. Loring?

A. It is.

The letter is marked Exhibit F, and is offered in evidence.

102 EXHIBIT F.

KEARSARGE MINING COMPANY,
CALUMET, MICH., *June 18th*, 1868.

E. T. LORING, ESQ.,

DEAR SIR: I have this day bought of T. F. Mason the following lands in the Hecla, section 23, namely, the north half of the northwest quarter, and the northwest quarter of the southwest quarter, in all 120 acres, for $20,000, $5,000 down, $7,500 in six months, and $7,500 in eight months, with seven per cent. interest on the last two sums. I had the contract drawn up and was ready to pay him the $5,000 down, but as he had just come from Ontonagon and the boat was to leave in two hours, he preferred to return to New York and write such a contract as he had given Hurlburt on his purchase, and have you execute the contract and pay him the $5,000. He will then send you the contract and I want you to see it carried out in all respects. Mason agrees that if you are away or do not do this, he will send it to me to do, and to carry out as I have agreed to do. Mr. Mason has given me his word in the presence of Frue that all this shall be done as he agreed, and that I shall have the land, making his word as good as his deed. There was not time to do this before Mason left, and I want you to treat him in this matter without doubting him at all. I will write you again this evening and send the contract I had drawn up. He has a copy of it with the terms as I have stated. This matter is very important. The purchase will add to the Ossipee five dollars per share at once in actual value. I do not want anything said of this at all. You will see by this that we shall get a division with the Hecla so as to get what will make a mine out of it by itself, we can make the Calumet vein by this over 3,200 feet in length. The purchase is very important. I send this by the hands of Randall, and will write again to-night by mail. Do not mention this. If you can, I would go to New

103 York and see Mason and close this at once. In no case will this be neglected. It is a fortune to us if well handled. Mason has the contract which I drew up and will show it to you. But this will tell you what is to be done. I give a sketch of the land. When I present the whole matter you will see how important it is to us. We can take from Hecla from 1,550 to 2,305 feet in length, and still give them out of this purchase double the amount of mining value that we get from them. The fact is, this ground bought is worth more to them than the ground next to Ossipee. It is for this reason that I do not want anything said till we have fully considered this matter together and see how we shall open it to Shaw. This is a rough sketch of the land bought. The vein is

nearer to it than I have given the dotted lines, as if made to divide between them. Hecla would be free then to give us 100 acres, 50 of which would carry the vein and we should give them 100, all of which would carry the vein. You will see the importance of this matter, and that we should not say anything till we consult. The Hecla is rich and we can make the Ossipee as rich.

Truly yours, CHARLES H. PALMER.

Q. You may state whether you wrote another letter of date the next day, with reference to the same matter, to Mr. Loring?

A. I did.

A letter dated June 19th, 1868, is produced by the defendant, upon notice, and is shown to the witness.

Q. Is that the letter?

A. It is.

The letter is marked Exhibit "G," and is offered in evidence.

EXHIBIT G.

KEARSARGE MINING COMPANY,
CALUMET, MICH., *June 19th*, 1868.

E. T. LORING, ESQ.,

DEAR SIR: I have drawn a map of the land bought of Mason. The Hecla owns all in the section, but the 40 and 80.
104 You may say that Shaw will not do anything about it. We can wait as long as he can, as we have enough to mine till the Hecla needs some of this land. The least I would take now would be the 80 next the Ossipee, through which the lode runs, and most likely with the right of mine perpendicular to the vein in the direction of the line A B. I do not think best now to say anything to Shaw about this. I have given on the other side the land in the Calumet section 14, bought by Hurlburt. I could have bought this a year ago last winter for $40,000, including the 120 now bought. If I had done so, we could now have this land in 23 for nothing, as Shaw will have to buy Hurlburt out even at $100,000. Stanton, who now has the Huron, is intending to buy Hurlburt out in 14, and I wish you would see him when he returns, and urge him to do it. Hurlburt bought of Mason some 1,200 acres of land in 14, 15, 11, 22, and 28. If Stanton can get the land in 14, 480 acres, and the land in 22, on the east half, I should like it, as the land in 22 is desirable for us. Hurlburt offered the land in 14 to Stanton for Huron stock. This would be a good thing for Stanton. I shall write Stanton on this subject. This matter is not to be talked about. I had a long talk with Stanton, and he is inclined to buy it. He has let Hurlburt have money.

I send the duplicate of the contract I gave Mason. Mason is to write a contract like his contract with Hurlburt, and send to you. Mason talked this matter over with Frue and myself, and says we shall have this land as agreed, and that his word is as good as his

deed. I trust nothing will be left undone to carry this out, and you had better go to New York and see it done. We shall get out of Hecla all I have indicated. The land we would exchange is more convenient on surface and underground for them than what they would give us. It will be under their machinery and improvements. This is a great thing for Ossipee. You had better telegraph me as soon as this is done, as I shall be most anxious about it. I wrote you to-day and sent by Randall, and I write this by mail. I shall put a note on this for Burr to open, in case
105 you should be absent. On the $5,000 to be paid down, pay interest if Mason wants it. If Burr reads this, I wish him to see all is done which he can do. Send the $5,000 in case you are not there to execute the papers, saying that you will execute them and return them as soon as you get home, as they can be sent to you. I do not want anything by which Mason can get out of this. He agreed that if there was any hindrance on your part, to send them to me to execute.

The S. P. is doing finely, 30 tons a week. To-day 50 tons have been shipped, and by Monday morning there will be at the smelting works 60 tons unsmelted. I think we have a sure thing in the S. P. We must make a family concern of Ossipee, and I would not sell any stock in it. We can make it put on its own importance. This we will do. I see this matter clearly. I write in haste and do not read over.

Truly yours, CHARLES H. PALMER.

Be particular to say nothing about Stanton's wishes. We need not buy any Hecla unless upon good time and satisfactory prices. We shall have a Hecla of our own. I think the S. P. will improve upon what she is now doing. The 40 acres is less than 350 feet from line of vein. In case you want us to raise $5,000 here, write us or telegraph, and we will use it for the mine.

Q. Will you state how there came to be two letters?

A. One letter was sent by the steamer Northwest immediately, to be mailed in Detroit, and the other was deposited in the post office at Houghton, and by regular course of mail would go out Saturday, the 20th.

Q. You may state whether in this letter of the 19th you did enclose a duplicate contract which you had negotiated and drawn up for signature by Mr. Mason?

A. I did.

The defendant's counsel admits that the witness sent the duplicate enclosure referred to.

106 Q. You may state whether any telegram was sent to Mr. Loring?

A. I sent a telegram with reference to this correspondence.

Q. Do you remember the date of that?

A. The first was June 22d. That would be the Monday following, the 18th being Thursday.

Mr. POST. I call upon Mr. Walker in pursuance of my notice to produce that despatch.

Mr. WALKER. I will admit that we have received notice to produce the telegram, but do not produce it.

Q. Can you state the substance of that despatch of June 22d?

A. The substance of that despatch is given in my letter to Mason of date of June 27, Exhibit C attached to Mason's deposition.

Q. You may read in this connection from your letter what you state was the substance of that despatch.

A. "On Monday the 22d I telegraphed to Mr. Loring that I had paid here for him $5,000, and asked him upon the receipt of either of my letters to pay the same amount to Mason and execute my contract with him."

Q. You testify that is the substance of the despatch?

A. Yes, sir.

Q. State whether, subsequent to that, you telegraphed again to Mr. Loring?

A. On the 26th I telegraphed again.

Defendant's counsel is asked to produce the despatch. He admits having received notice, but does not produce the despatch.

Q. You may state the substance of the contents of that despatch.

A. That despatch was substantially as the first, I think, to a similar effect as I then wrote it, and I asked a reply.

Q. You may state whether you received any despatch from Mr. Loring.

A. I received one on the 29th, dated the 27th.

107 Defendant's counsel is asked to produce the despatch. He admits having received a notice, but does not produce the despatch.

Q. I will ask you if you have any means of stating the substance of the contents of that despatch?

A. I have only my letter of the date referred to.

Q. You refer to what letter?

A. I refer to a letter to Mason of the date of the 29th, attached to his deposition in this cause as Exhibit D.

Q. If, upon looking at that, you are able to state what the despatch was in substance you may state it.

A. The telegram stated that the contract was closed, and he started for the lake that day.

Q. Is that in accordance with your recollection of the facts?

A. Yes, sir.

Q. I will ask you if you have that original despatch?

A. I have not.

Q. Have you searched for it?

A. I have looked for it among my papers, and I have been unable to find it.

A. I will ask you if you received any letters from Mr. Loring in reply to your letters of June 18th and 19th, or either of them?

A. I did.

Q. Do you recollect whether you received one or two letters?

A. I am not certain; I have the impression I received two, one of them a short letter and the other a longer letter, but I may have confounded the telegram with the shorter letter.

Q. Have you looked for those letters?

A. I have.

Q. Have you been able to find them?

A. I have not been able to find them?

Q. You made search?

A. I have had searches made. Those letters were in Captain Frue's desk, which I used on being there that summer, and undoubtedly left them there.

108 Mr. POST: Those letters, Mr. Walker, are included in the notice, and if you have them, or if you have copies of them, I would much rather take them than to undertake to state their contents, if you are willing to produce them.

Mr. WALKER: I am not willing to produce them.

Q. You may state the substance of that letter, or those letters, as near as you can?

A. Mr. Loring, in his letter, approved of this purchase—was very much pleased with it, and stated that he joined us in the purchase.

Q. Do you recollect about what date this letter was, or don't you know about that?

A. I don't recollect, excepting from the circumstances. I received this letter, or letters, about the time I received the telegram, somewhere about the 29th.

Q. What would be the ordinary course of mail between Houghton and Boston?

A. It would be four or five days.

Q. You may state whether these letters, or either of them, or the telegrams, were exhibited to Captain Frue?

A. They were.

Q. You may state, as near as you can, the contents of the second letter?

A. I have the impression that he stated in the second letter, or rather, I think it was in the first letter, that he would go to New York as soon as Mason arrived.

Q. Whether in either of them, there was anything said of Mason having arrived?

A. I think there was in one [of] them, with the intention expressed of starting for New York.

Q. How soon after that did you see Loring?

A. I saw him soon after that in Houghton.

Q. Was any interview had with him?

A. Yes, sir.

Q. Between whom?

A. Between myself, Capt. Frue, and Mr. Loring.

109 Q. In that interview was anything said about the purchase on section 23?

A. It was the substance of the discussion entirely.

Q. State what the interview was?

A. The interview related to the disposition to be made of this purchase. Mr. Loring took the ground from the beginning, that we should hold that purchase jointly.

Q. What was the discussion about?

A. Captain Frue and myself, rather inclined to believe that it would be better to connect it with the Ossipee.

Q. Let me ask you to explain about the Ossipee?

A. That was a mining company in which we three were interested, and this property bore the nearest connection to that—in fact a very near connection to it.

Q. What was the outcome of the interview with reference to the disposition of this question of whether to unite this purchase with the Ossipee company or not?

A. The decision was that we should hold it ourselves.

Q. Whether any discussion was then had as to the value of this purchase?

A. There was. It was considered very valuable from the beginning.

Q. The question is, whether there was any talk about it being valuable at that time?

A. There was.

Q. By whom?

A. By Mr. Loring, and by ourselves.

Q. You may explain, if you please, what the fact was with reference to the payment of money at Houghton for Mr. Loring, on account of this contract?

A. There were $5,000 paid there by Capt. Frue.

Q. Paid how?

A. It was paid on the property bought for the Adams Mining Company on Portage Lake. Mr. Loring had bought the property for the Adams company. There had been $5,000 paid upon it, and there was about $5,000 due at that time.

110 Q. This money, you say, was paid on his behalf by Mr. Frue?

A. It was.

Q. Was that the money to which your despatch to Loring related with reference to the $5,000?

A. It was.

Q. I don't know whether you saw that contract, which had been executed between Loring and Mason, at this interview in July.

A. No, I did not see it.

Q. I will ask you to state, if you can, who were the grantees or

parties of the second part named in the original contract drawn for execution at Houghton?

A. Charles H. Palmer and William B. Frue, or Charles H. Palmer and associates—one of the two.

Q. You may state when you next saw Mr. Loring.

A. I next saw Mr. Loring in October, 1868.

Q. Where?

A. At Houghton.

Q. Was an interview had with him there?

A. There was.

Q. Was anything said at that interview about this purchase on 23?

A. It was spoken of in this way. Mr. Loring said that the $5,000 which had been paid on Adams' purchase, but which was to apply on 23, was to apply on my part of the Adams purchase.

Q. What was said about that between you and him?

A. I told him that I had made the purchase upon his request and order for the Adams Mining Company, and that Frue had paid the $5,000 as so much on 23, and I could not listen to it a moment.

Q. You insisted that the $5,000 paid should apply on 23?

A. I did.

Q. What was the outcome of that discussion—what further was said about it by Mr. Loring?

111 A. Mr. Loring did not want I should say anything to Captain Frue about it at all, but that he would look over his letters and see, when he got to Boston, if I had purchased the Adams front in connection with himself, and when we arrived there he looked at the letters and found I was correct about it.

Q. You returned with him to Boston after this interview from Houghton?

A. Yes, sir. Perhaps I stopped on the way, but I came down with the purpose of going to Boston.

Q. Was Mr. Frue present at this interview?

A. No. Captain Frue was sick at the time.

Q. You may state briefly just what was done about this Adams purchase on your return to Boston.

A. We went before the Adams directors, and Mr. Loring stated that I had made the purchase for the company at his order, and it was turned over to the company. They accepted the purchase.

Q. You may state whether or not you received any letters from Captain Frue during the winter of '68 and '69, with reference to his interest in this purchase of 23.

A. I did.

Q. You may state, if you please, where you were during that winter?

A. I was in Boston and New York, and some of the time at home.

Q. Whether you have your letters received from Frue at that time?

A. I have most of them, but I have lost some of them relating to this same subject.

A paper purporting to be a letter from Mr. Frue to Mr. Palmer, dated at Houghton, March 6th, 1869, is produced, and the witness states that the same was received, and by consent the following clause contained in said letter relating to the matter in controversy is here inserted in place of the letter:

"Your favor of the 18th, with notes enclosed as stated, is at hand. The note of $4,000, signed by you, is the one used.
112 You, however, neglect in your letter to mention anything about the paper asked for showing my interest in the land purchased. I would like to have you attend to it as soon as possible."

Q. This letter was directed to Pontiac?
A. Yes, sir.
Q. I will ask you whether the former letter, in that clause referred to, you are able to produce?
A. No, I am not; I think I have it, but I cannot possibly find it; I think I have seen it within a year or two.
Q. I would like to ask you what land purchase this referred to?
A. 23.
Q. I will ask you whether a former letter, such as is there referred to, was received by you from Mr. Frue?
A. It was.

Letter shown witness dated February 22d, 1869, at Boston, and addressed to the witness, at Pontiac.

Q. In whose handwriting is that letter?
A. Mr. Loring's.
Q. Was that received by you in due course of mail about the time of its date?
A. It was.

The letter is offered in evidence and marked Exhibit H; it is as follows:

EXHIBIT H.

OFFICE OF THE SOUTH PEWABIC COPPER COMPANY,
BOSTON, *February 22d*, 1869.

C. H. PALMER, Esq., *Pontiac.*

DEAR SIR: I have your favor of the 18th, and note contents. A few days after the receipt of yours of the 8th, Mr. Mason called at the office, when I made, in virtue of your letter, this proposal to him, viz: that you would sell him 1,000 shares Ossipee at net cost, on condition he would retain one-third interest in section 23, stating
113 I would then retain one-third, you and Frue the other. The inclosed is his reply to this proposal. I was very much disappointed at this result, most earnestly desiring he would

acceed to it as a help to you, and very much relieving me from the necessity of raising the whole amount due, which I have done with some difficulty to save the previous payment made, and got the deed in my possession. Now, unless something turns up, more fortunate than I have any expectation of, I shall very much require funds within the next thirty days to the extent of some $25,000 to meet payments due within this time on account of the company on which I am endorser. I am unwilling to make any further personal sacrifice by sale of property to meet these obligations, and cannot do it without securing to myself the chances of remuneration for the sacrifices made from other resources. I therefore deem it my duty, and as an act of courtesy towards you, to notify you that whatever additional proportion you wish to secure for yourself in section 23, it will be necessary for you to remit the amount of the cost of such additional portion as you desire *prior* to the 20th of March, otherwise I shall consider as mine and retain the three-fourths interest in section 23 which I have paid for. I notice your remarks about my seeing Mr. Hall, which indicate most clearly to my mind that you do not begin to realize the difficult position I occupy in connection with South Pewabic. My friends have *all* lost confidence in me or my judgment by reason of this unfortunate result. Any further importunities with them mortifies me beyond measure. It will take five years to reinstate myself where I once stood, however successful I may be, and not then unless I can avoid being *constantly* in the market as a *borrower* of money. I must get out of this position as speedily as possible. Confidence is of very slow growth, and the want of it very annoying to me.

Yours, truly, E. T. LORING.

I see by the Gazette that Frue is still indulging in his esti-
114 mates never to be fulfilled. He just about held his own in December. In January produced 91⅜ tons mineral. This with copper at 24 cents in the spring, will not leave much profit, I can assure you. What is worse, he is out of coal, yet he keeps figuring on the profits to the Gazette, and to his New York friends. I hope time will prove their correctness, but I have seen and *felt* so much of these estimates that I am more incredulous every day.

E. T. L.

Mr. POST: I here call upon Mr. Walker to produce, in accordance with the notice, the letters referred to in Exhibit H, of date February 8th and February 18th, 1869.

Mr. WALKER admits the receipt of the notice, but does not produce the letters.

Q. State whether the letter shown you was enclosed in Exhibit H?

A. That is the enclosure referred to.

The enclosure is marked Exhibit I, and is offered in evidence. It is as follows:

EXHIBIT I.

OFFICE OF QUINCY MINING COMPANY,
NEW YORK, *February 15th*, 1869.

E. T. LORING, ESQ.

DEAR SIR: As you requested, I write to say that I am not prepared to consider favorably Mr. Palmer's proposition at this time; and will, as you desire, have deed of the lands in section 23 ready for you on the 18th instant.

Truly yours, THOMAS F. MASON.

Q. Whether you made any response to that letter of February 22d?

A. I answered the letter.

Q. Do you remember the date?

A. I answered it on the 26th.

115 Mr. POST: I call upon defendant's counsel to produce the letter of February 26th inresponse to this letter of February 22d.

Mr. WALKER: I do not produce it.

Q. Whether you kept letter-press copies of your letters?

A. I never have kept letter-press copies.

Q. And you have not letter-press copies of any of these letters?

A. No; I have sometimes made copies of my letters and kept them.

Q. Have you any copy of the letter in response to this, of February 26th?

A. Nothing excepting memoranda.

Q. Are you able to state the substance of that response?

Mr. WALKER: He had better produce the memorandum.

Q. Have you the memorandum with you?

A. Here is the memorandum, I think.

Q. You produce the envelope in which this letter was enclosed?

A. Yes, sir.

Q. And upon that envelope is a memorandum?

A. Yes, sir.

Q. Whether that memorandum was made at the time?

A. It was.

Q. You may refer to that memorandum if you please, and state what the contents of the letter were. You may first read the memorandum.

A. "I have been willing to unite in any plan to mutually aid us, but failing in this, cannot consent to lessen my interest in section 23." That is the memorandum. I probably wrote a letter in accordance with that, but I do not remember the contents of the letter,

except by this minute. I simply noted that on the envelope in which the letter was.

Q. I will ask you whether on March 6th, 1869, you wrote a letter to Mr. Loring?

A. I did.

A letter of that date is produced by the defendant in pursuance of notice.

116 Q. Whether you got any reply from Mr. Loring to your letter of the 26th of February in answer to his of the 22d?

A. No, sir; I did not.

The letter of March 6th is offered in evidence, and is marked Exhibit "J."

EXHIBIT J.

PONTIAC, *March 6th*, 1869.

E. T. LORING, Esq.

DEAR SIR: I returned from Lansing to-day, where I had been called by telegraph to advise with our L. S. members. Bill 56 will not pass. There is a bill before the Legislature to take the land grant from the Marquette & Ontonagon R. R. Co. and give it to a new company. I think this will be passed. This is important to our iron lands. I have a correspondence in New York with a new party in regard to the sale of these lands, which, in case of the failure of the McKenzie party, may amount to something. I find it difficult to sell any property, as the wheat market is such as almost to shut up all chances of making any money negotiations of any kind. It is as bad here now as it was in Boston last fall. I have new negotiations in regard to selling ten acres of a grove which I have in the city, for a park. A church, also, wants a piece of this land, and I may succeed in this. I shall do the best I can. You had better sell the 100 shares of Hecla. I see it is selling for $80. I wish you would sell 2,000 shares of Ossipee; sell it at $5. I had rather bye and bye buy in again than to be in debt. I want to sell anything I can sell. With the land in 23, Ossipee ought to sell. It is cheap, and it must sell at some time, if not now. Since I went up to L. S. last spring, I must say at no period of my life have I begun to suffer so much as I have from that time, yet it seems to me by doing the best we can we shall in the end come out all right.

Truly yours, C. H. PALMER.

117 Defendant produces letter of March 8th, 1869, from Palmer to Loring in pursuance of notice.

Mr. POST. I ask further for the postscript that was attached to that letter as a part of it.

Mr. WALKER. I know nothing of it.

The letter of March 8th, 1860, was offered in evidence, and marked Exhibit "K," and is as follows:

EXHIBIT K.

PONTIAC, *March* 8, 1869.

E. T. LORING, Esq.

DEAR SIR: I have your letter of the 6th. This is the first I have heard of the matter contained in your letter. I shall write to Frue, asking him to withdraw his resignation, as I do not think it is for our interest. I have no idea of his reason, unless it be in regard to the store, of which I had heard nothing. That matter, it seems to me, can be arranged, as I know it was all done by the board in the first place. I wish you would send me a statement that Captain Frue owns one undivided one-fourth quarter interest in the 120 acres of 23, as he has paid that amount. I want this so that he will have no cause to feel uneasy about it. I believe I can sell the iron lands if Dr. McKenzie fails; and I think I ought now to do all I can to get the R. R. grant of land into the hands of a new company, as this will render their sale an easy matter.

Truly yours, CHARLES H. PALMER.

Q. I will ask you whether enclosed in that letter, as a part of it, there was a postscript?

A. There was.

Q. How was that written?

A. On a separate piece of paper; I kept a copy of it.

Q. Have you that copy?

A. I have.

Q. Will you produce it?

118 Witness produces a paper.

Q. I ask you whether the original, of which this is a copy, was enclosed in that letter of March 8th?

A. It was.

Q. Was this copy made at the time?

A. Yes, sir.

Q. And this memorandum at the bottom?

A. It was made at the time.

Q. What does this "Ginnie" refer to?

A. My daughter.

Q. Was this copy made by her, or by you?

A. By me.

Q. This is her signature, or yours?

A. That is her signature.

Q. The rest is in your handwriting?

A. Yes, sir.

The postscript is marked Exhibit "L," and is offered in evidence.

EXHIBIT L.

"P. S.—Since writing you the enclosed letter to-day, I have referred to yours of the 22d ult., and I write this to say to you that I cannot consent to your holding the remaining three-fourths of sec-

tion 23, excepting as subject to my one-third, as originally agreed upon, having, as you know, sold my smelting stock to aid both of us in securing our interests in the most valuable purchase we have made; it would be especially unjust and inexcusable for you in this way to assume the exclusive benefit, when your own interest is derived solely through me, as a condition of your coming into the purchase. Therefore I must insist, if you have not already done so, that you first apply to my interest any means in your hands belonging to me.

Truly yours, CHARLES H. PALMER.

119 PONTIAC, *March* 8th, 1869.

Original of the above enclosed in a letter directed to E. T. Loring, 31 Kilby street, Boston, Massachusetts, and posted by me. "Ginnie."

Q. You may state whether, up to the time that this letter of March 8th was written, you had received any response to your letter of February 26th in reply to his?

A. I had not.

Q. You refer here to having sold some smelting stock. Will you explain that transaction?

A. That occurred in December.

Q. What date?

A. It was sold on the 9th of December.

Q. Will you state what smelting stock it was?

A. It was stock in the smelting company of Detroit and Lake Superior.

Q. Held how?

A. It was held by Mr. Loring by a certificate in his name as trustee.

Q. How many shares were there?

A. In this certificate there were 1,125 shares.

Q. What amount was sold?

A. One thousand shares were sold.

Q. You may state how they came to be sold?

A. Mr. Loring and myself were consulting about making the second payment on 23, which became due on the 18th of December.

Q. This consultation was where?

A. In Boston, in his own place. I ought to say that Mr. Loring was a good deal straightened in regard to South Pewabic matters at that time, and that was the reason of my going to Boston, and of course, this was a matter of solicitude between us, and I suggested to Mr. Loring that he use my notes for making the second payment on this purchase in 23. He said South Pewabic had so shattered him that he could not do it, and as last resort suggested the
120 selling of my smelting stock, to which I consented for the purpose of making that payment.

Q. Whether that was at that time valuable stock?

A. It was valuable.

Q. To whom was it sold?

A. It was sold to members of the same company in Waterbury, Connecticut.

Q. Who negotiated the sale?

A. I did.

Q. At how much?

A. Fifteen dollars a share for one thousand shares.

Kingsbury was the man with whom the negotiation was made, the actual transaction was made with Kingsbury, but the negotiation was made more with Brown than with Kingsbury. I don't see that it makes any difference, Kingsbury was secretary or treasurer and Brown was president. They purchased to divide among themselves.

Q. You negotiated that sale at Waterbury?

A. Yes, sir.

Q. You say the date of this sale was December 9th?

A. Yes, sir.

Q. Will you state whether Loring was notified of that sale?

A. Yes, sir; I notified Mr. Loring of the sale.

Q. How?

A. I notified him by letter and I saw him.

Q. Do you recollect whether your letter was sent from Waterbury or New York?

A. I do not. I don't remember whether I went directly to Boston or New York, but between the 9th and 18th I was certainly in Boston, and I was also certainly in New York.

Q. Your recollection is that from one of those places you wrote with reference to it?

A. Yes, sir.

Q. You had an interview with him personally between that time and the 18th?

A. I had.

121 Q. Will you state what was said to him about this sale at that time?

A. Mr. Loring thought I sold very well under the circumstances and was very much pleased with it, and we talked of its application to that payment.

Q. How was the payment to be made for this stock?

A. I negotiated with Mr. Kingsbury to have a part of it, it seems $5,000—my recollection was that it was more—paid by the 18th.

Q. Was the reason of that urgency mentioned to Kingsbury?

A. They understood the reason of my selling this, to pay my interest in 23.

Q. What was the arrangement about the payment down; how was it to be deposited?

A. $5,000 was deposited in the Ninth National Bank of New York to the credit of the North National Bank of Boston, at Mr. Loring's request.

Q. Whether the North National Bank of Boston is the bank where Mr. Loring did business?

A. It was at that time.

Q. Do you know the date of that deposit in New York?

A. I do. It was deposited the 18th of December.

Q. What was the date of the payment of the balance, the $10,000?

A. That was sent on the 26th of December to Mr. Loring in a draft.

Q. What was the purpose of making that sale, as discussed between you and Loring?

A. It was made for the purpose of paying my interest in 23, as well as to help Mr. Loring also, because it was a much larger sum than my interest was.

A letter produced dated March 16th, 1860, addressed by E. T. Loring to complainant at Pontiac.

Q. I will ask you whether you received that letter about the time of its date?

A. I did.

122 Q. Whether it is in Mr. Loring's handwriting?

A. It is.

The letter is offered in evidence and marked Exhibit M.

EXHIBIT M.

BOSTON, *March* 16, 1869.

C. H. PALMER, Esq., Pontiac.

DEAR SIR: Your favors of the 6th and 8th were received a few days since. I now improve a few leizure moments to reply, and what shall I say on my disappointment in not receiving any aid, or rather funds to meet my payments that were due the 8th and 12th, the same date yours were due to me. The great difference in our situations are that mine must be paid at whatever sacrifice, and yours when time and circumstances will enable you to do it. This condition of things is most unfortunate for me, and I regret to say that I am inclined to the opinion that necessity will compel me to follow your suggestion in the sale of the Hecla stock before the month is out. This will relieve me in part, and I wish I could feel as confident as you have expressed in your letter, that "we shall, in the end, come out all right." The idea of my ability to sell your Ossipee stock at $5 shows pretty clearly how little you realize the state of feelings in this community, and I see no hopes of improvement, particularly while that damnable sheet, the Houghton *Gazette*, is allowed to issue such vile trash as may be found in that of March 4th. Think of me as one of those "lordly directors," who has about ruined himself and family in his efforts to advance and promote the interests of Lake Superior, to be treated in this manner; not that I care two straws for his personalities, but the effects his course is having on our business by the discontent he is sowing among those in the employ of the companies, and the jealousies

and strife he is creating among the different companies, stockholders, and directors, eastern and western interests, is enough to drive a man mad, fancying, fool-like, that he has and is serv-
123 ing our interest because he has advocated the tariff. Now, in my judgment, he has and is doing us a great deal more injury than all the benefit the tariff will confer; and until he can be made to stop his cackling, adieu to any hopes of bringing in new men to our interests, or selling any portion of our interest in our new companies, or disposing of the lands we have. This epistle does not present things very favorably, still I write just as I feel, though I am not without hopes that the future will appear more promising than the present. Yours,

E. T. LORING.

Enclosed I forward the bond given by Mason, with an endorsement that I trust will meet your wishes. E. T. L.

Q. I see on the margin of this letter these words, "enclosed I forward you the bond given by Mason, with an endorsement that I trust will meet your wishes. E. T. L." I ask you what was enclosed in that, to which that refers?

A. The contract with Mason, Exhibits "A" and "B."

Q. It is the contract between Mason and the defendant Loring, trustee, and the endorsement upon it, which is annexed to Captain Frue's testimony in this case, and marked Exhibits "A" and "B?"

A. Yes.

Q. Was there an answer to this letter?

A. There was.

Q. When you received this contract, Exhibit "A," with the endorsement, Exhibit "B," upon it, enclosed in this letter, what did you do with it?

A. The contract I sent to Captain Frue.

Q. That document was enclosed in your letter of April 6th, 1869, attached to Captain Frue's testimony, marked Exhibit "D?"

A. Yes.

Q. When did you next see Mr. Loring, after you received the contract?

A. I saw Mr. Loring on the 28th of May.

A letter is shown witness, dated Houghton, May 21st, 1869, from Mr. Loring, addressed to the witness at Pontiac.

124 Q. Whether it was in response to that letter that you met him at the Russell House?

A. It was.

Letter offered in evidence and marked Exhibit "N." It is as follows:

EXHIBIT N.

HOUGHTON, *May 21st*, 1869.

C. H. PALMER, Esq., Pontiac.

DEAR SIR: I write you a few lines just to say that I expect to be

in Detroit Friday morning, May 28th, barring accidents and delays by railroads. I am not in the mood to attempt to write you in full on matters and things here as requested, much preferring to have a personal interview with you.

Yours truly, E. T. LORING.

Q. You had an interview with him at the Russell House about the 28th of May, 1869?

A. Yes, sir.

Q. State fully what occurred at that interview with reference to this matter?

A. At this interview between Mr. Loring and myself the conversation was with regard to what had occurred between him and Frue at Houghton.

Q. He had been to Houghton and was on his way back?

A. Yes, sir. The interview was also with regard to the accounts.

Q. Whether, at the time of this interview, the deed to Frue had been executed and delivered, as you understood?

A. I understood so from Mr. Loring.

Q. Had been done while he was up there at Houghton?

A. Yes, sir.

Q. Relate that whole interview with Mr. Loring?

A. Mr. Loring regretted that I had aided Frue to that quarter, and that he had deeded anything to Frue.

Q. Anything said about having had trouble with Frue?

125 A. That had been the previous conversation.

Q. I want you to give the whole conversation.

A. He told me that Captain Frue threatened to have him arrested, and that he had a fearful time with Captain Frue. He went over the whole transaction.

Q. What was the whole transaction; I want you to go over it just as he did?

A. He said Frue had agreed to wait thirty days, to let him return and wait thirty days, before he commenced any proceedings, and also he spoke about the stock, which was the matter of dispute between them; and after this he said he regretted that he had deeded anything to Captain Frue, and that I had aided him to any.

Q. Did he state whether he had deeded to him?

A. Yes, sir.

Q. What further?

A. I then told him that he knew that Captain Frue had paid $5,000, and that he was entitled to his interest; as Captain Frue had asked me to get something to represent that $5,000, I could not do otherwise than do as I had done. Mr. Loring said that he would rather I should have had half with him than Frue anything, to which I replied to him that my interest was one-third.

Q. State the whole conversation.

A. Then the conversation turned upon the accounts, and Mr.

Loring, upon my statement with regard to the accounts, agreed to look over them, and if he found me correct, if they were as I supposed they were, everything would be arranged between him and me satisfactorily.

Q. Was anything said by him about your doing anything with Frue?

A. Yes, sir; he wanted I should write to Frue to moderate him. He thought Frue was hasty, and he wanted I should write him, which I told him I would do.

Q. Whether in pursuance of that you wrote a letter?

A. I wrote Frue on the 30th of May.

Q. Whether that is the letter that was put in evidence and attached to Captain Frue's testimony as Exhibit E?

126 A. It is. There was a good deal said about the accounts, and I went over the several items. I went over them generally. Mr. Loring had charged me, and omitted to credit me. It was quite a long conversation, and was very friendly between him and me, and I thought there were a great many errors in his account.

2.15 P. M.

Q. I don't remember whether you had finished the interview at the Russell House?

A. My testimony states that Mr. Loring said he would examine the account when he went to Boston, and I received a letter from him on the 8th of June, affirming his accounts instead of correcting them.

Mr. WALKER: Will you produce that letter?

Mr. POST: I do not care to put the letter in unless you want it.

Q. Whether at this time you knew of the agreement, which it appears was made between Captain Frue and Mr. Loring, at the time the deed was given Frue?

A. I did not know of that.

Q. When did that first come to your knowledge?

A. It came to my knowledge about the commencement of this suit.

Q. After this, May, 1869, where were you from that time on, in general. Do you recollect where you were in April, 1870?

A. I was in Detroit. I met Mr. Loring here by appointment.

Q. You saw him here, then?

A. I saw him here.

Q. Whether you returned with him from here—in reference to looking after the South Pewabic matter, is what I refer to?

A. He came here to request me to go up to Lake Superior and look after South Pewabic, and also to settle some difficulties which occurred, which I did, and I went up to Lake Superior and spent the summer there.

127 Q. And from that time on, where were you, in '71, '72, and '73?

A. I was in Washington a great deal of the time; some of the time in Lake Superior. I was away from home a great deal during all of that period.

Q. Do you remember the fact of Captain Frue bringing suit against Loring in the United States court?

A. I remember that he did.

Q. I don't know whether you know about the time that suit was commenced?

A. I could not say definitely. I have an impression it was in 1871.

Q. You may state, if you please, generally, how the accounts of your and Frue's dealings with Mr. Loring were kept, whether, for instance, whether you kept an account yourself?

A. No; I did not keep an account.

Q. Where was the account kept, so far as it was kept?

A. Mr. Loring kept it. Frue, I presume, kept his own account.

Q. You kept no book account of it?

A. No; I did not. I never kept any account of it.

Q. Do you know in general how Mr. Loring kept the account—that is, under what name?

A. He kept the account under my name—the land account. That was the general account in which there were a great many people interested.

Q. All that account, you say, was kept as a land account in your name?

A. In my name—was designated by my name.

Q. Was that with your consent?

A. It was not.

Q. Did you, at any time, ever protest against it?

Objected to as leading.

A. I did. I objected to the account being kept in my name when it was so commenced.

Q. You may state, if you please, what that land account embraced, in general terms, what interests?

128 A. It embraced the Ossipee and Kearsarge, the Iroquois, and Torch Lake.

Q. Whose interests were embraced?

A. There were a great many parties connected with it. There were three or four in Lake Superior——

Q. The most I care about is the fact that others were interested besides yourself.

A. They were. There were parties in Boston, New York, probably 20 or 30 persons in all.

Q. Did Mr. Loring keep an account which showed by itself his dealings with you individually?

A. Not in relation to these matters. He had a private account with me aside from that.

Q. Did he have any account in your name which embraced all his dealings with you?

A. This land account, as such with all these persons, was placed in my private account, December 31st, 1867.

Q. How do you mean, the balance carried forward?

A. The balance carried into the other account.

Q. Did it remain there?

A. It was taken out March 31st, 1869.

Q. For what reason?

A. I objected to it. I objected to items of the account as well as the whole thing.

Q. From the manner in which that land account was kept, was there any difficulty in your determining how your matters stood upon the account itself?

A. There was a difficulty, because it required a knowledge of everybody else's account which I had not. Of course it would be blind to anybody unless they kept the account themselves, and knew the relations of everybody to that account.

Q. You may state whether, during this period, from June, 1868, to February, 1869, and afterwards, you had any means which were in Mr. Loring's hands?

A. I had.

Q. What did it consist of?

129 A. It consisted of smelting stock and of Hecla stock, of Adams and South Pewabic stock, and the Weed File Company of Boston.

Q. In what name were the certificates of these stocks—I don't know whether they were all the same?

A. They were different stocks. They were all in Mr. Loring's name as trustee. At least I have no knowledge to the contrary.

Q. Well, sir, whetherr Mr. Loring at this time had any of your paper, your notes.

A. He had a large amount of my paper. I think I have signed twenty notes of five thousand each at a time.

Q. Whether these stocks or this property so held by him was of large value or not?

Objected to as leading.

A. It was.

Q. Of about what value approximately?

A. The stocks in his hands probably cost thirty-five or forty thousand dollars.

Objected to as not responsive to the question.

Q. You may state in general what, upon a fair accounting between yourself and Mr. Loring, would have been the state of accounts between you during this period, which way would the balance have been, from June, 1868, up to February, 1869, and afterward?

A. Do you mean for me to take into account the notes used at the time—what the balance would have been?

Q. Certainly.

A. And including the land account and my private account?

Q. Certainly; I mean the land account as it should nave been.

A. There would have been in my favor, during the whole of this purchasing, from ten to twenty thousand dollars, including the notes.

Q. Have your matters with Mr. Loring ever been settled as to your accounting?

A. No.

130 Q. Did he bring suit against you at any time?

A. He commenced a suit in 1871 in the United States court in this district.

Q. Was that suit ever brought to trial?

A. It was not.

Q. What became of it?

A. It was discontinued June 23d, 1874.

Q. When did you learn of the discontinuance of that suit first?

A. Just before the commencement of this suit.

Q. When was this suit commenced?

A. December 20th, 1875.

Q. You may state when you first saw the deed from the defendant Loring to the defendant Welch, which is referred to in the bill?

A. I saw it just before I commenced this suit.

Q. Had you seen it before that?

A. No, I had not.

Q. Had you knowledge of it before that?

A. Not but a little while. I sent for it as soon as I had knowledge.

Q. You may state what your relations with Mr. Loring were up to the time of this contract and after, so long as you had dealings together?

A. They were very intimate, so much so that I put implicit confidence in Mr. Loring, and Mr. Loring assumed to act for me as he did for himself.

Q. With reference to this land account which you say was kept in a lump, what arrangement, if any, did you have with Mr. Loring as to raising money and making payments?

A. When the land account was commenced, Mr. Loring agreed to furnish me any money I needed in that transaction.

Q. In that of course you do not refer to this purchase in section 23?

A. Not at all.

Q. What was the arrangement about repayment of that?

131 A. The arrangement was that he should not call for it until it suited my convenience.

Q. In the letter, Exhibit "N," from Mr. Loring to you, I read as

follows: "The great difference in our situations is that mine must be paid at whatever sacrifice, and yours when time and circumstances will enable you to do it. This condition of things is most unfortunate for me, and I regret to say that I am inclined to the opinion that necessity will compel me to follow your suggestion in the sale of Hecla stock before the month is out. This will relieve me in part," &c. Whether that reference to the difference in your situations had reference at all to this arrangement about the land account which you have stated?

Objected to as leading and improper.

A. It may have reference to it. Mr. Loring, until the latter part of our transactions, recognized his arrangement with me.

Q. In that regard?

A. Yes. I think Frue knows something about that.

Q. What was the occasion or reason of this favorable arrangement?

A. The reason was that along in 1860 and 1861 Mr. Loring had been ordered by me to sell Franklin stock, which he had in his hands as trustee, so as to give me a clear balance of $20,000, in view of the large interests he was holding. Mr. Loring, when ordered peremptorily to sell, put the stock on the market, and then withdrew it without notice to me. The result was that the rebellion took place after the election of 1860, which was disastrous to all business, in its commencement. It made large assessments on that same stock necessary, and in 1861 the Franklin Company used my stock to borrow $10,000. The Pewabic used my stock to borrow $10,000 more. Mr. Loring, without notice or authority from me, loaned his own stock to me, as he said, and sold 300 shares at $12 to pay an assessment due Franklin of $3,600.

Q. Was there any loss growing out of this?

132 A. It was a loss of $10,000 or $15,000.

Q. How did this lead to this arrangement with Mr. Loring?

A. Of course I complained to Mr. Loring, and in consequence of this wrong which he knew I had suffered, he made this arrangement.

Q. This investment which went into the land account?

A. Yes.

Q. What is the value of this land now in controversy, if you can tell. There is no question but this third is worth more than $5,000, is there?

A. No; it is a very valuable piece of land.

Q. What did you consider this property worth at the time of and immediately after the purchase?

A. I considered it worth $100,000.

Q. That is the whole tract?

A. Yes, sir.

Q. Is it worth less than that now?

A. No, it is not.

*Cross-examination.*

By Mr. WALKER:

Q. When and where was this arrangement made between you and Mr. Loring, of which you have just spoken?

A. Made in Boston.

Q. When?

A. It was made in 1866.

Q. Who was present at the arrangement?

A. I don't recollect of anyone being present.

Q. Precisely what was the arrangement; give its definite terms?

A. The arrangement was that any money that I needed in the purchases that were contemplated then, which is the land in Ossipee and Kearsarge, that he would furnish me any money that I needed, and would not call upon me under any circumstances until it suited my convenience. Those were the words used.

133 Q. Precisely what property was then in contemplation of purchase?

A. The property then in contemplation was land both northeast and southwest of Ossipee, the land surrounding, that we then contemplated, which would be located in 26 and section 6, on different sides of Ossipee.

Q. And it was with reference to that purchase that this arrangement was made?

A. Yes, sir; this purchase that we contemplated making at that time. The purchases involved the developments of the Calumet lode.

Q. Did you ever ask Mr. Loring to put that understanding in writing?

A. No, I never did.

Q. Was there any writing, by letter or otherwise, giving the terms of this arrangement?

A. There was not; he might have referred to it in letters; he certainly did to Captain Frue.

Q. All you know is by hearsay?

A. No, I have seen the letters; I merely say that because I have seen it.

Q. I understand you to say that after March 31st, 1869, there was a separation of the private account and the land account?

A. I said so.

Q. Did you receive about that time, in the early part of 1869, statements of account, both of the land account and the private account, from Mr. Loring?

A. I did receive statements. At the same time I perhaps might receive a separate statement without reference to any other.

Q. Separate statements both of the land and the private account, wasn't there?

A. Yes.

Q. Did he ever charge you in that land account with any money paid for section 23?

A. He never charged me in any account.

134 Q. Did he ever charge you in your private account with any money paid for you on section 23?

A. He never did, excepting he had balances you know on my account.

Q. Did he not credit you in your private account with $15,000 received from the sale of stock at Waterbury?

A. He credited to me in the mixed account, that is, the account which was mixed.

Q. When it was separated, was not that credited to the private account?

A. It was left in the private account.

Q. Did he not about that time, to meet some of your notes, and at your request, sell Hecla stock?

A. He was told that he might sell Hecla stock.

Q. To the amount of $6,000, was it not?

A. $8,000.

Q. He did sell, did he not, Hecla stock to the amount of $8,000?

A. He reported a sale.

Q. Did he not credit that $8,000 in your private account?

A. That was credited in the mixed account.

Q. Wasn't it credited in the private account, being the sale taking place after March, 1869?

A. No, sir; the account was then a double account when that credit was made. At that time it was a double account.

Q. When he separated the accounts did not the $8,000 for the sale of the Hecla stock appear in your private account?

A. It remained in that private account.

Q. So that both the $15,000 and the $8,000 stood in the accounts after separation, to the credit on your private account?

A. Yes.

Q. And no charge anywhere of any payment made on section 23?

135 A. No, there was no book account of it at all, no account ever made to me or Frue.

Q. Do you not know that the $5,000 of which you speak stood as payment upon the smelting stock, was never actually paid to Mr. Mason upon section 23?

A. I don't know it.

Q. Do you not know that that payment had been made before he received the $5,000?

A. I do not.

Q. You don't know how that is?

A. It was paid on the 18th, in New York?

Q. Do you know that he remitted on the 17th from Boston, $5,000 to Mason, or the payment then made, whatever it was?

A. The credit being made in New York on the 18th, could be drawn upon.

Q. I am not asking that?

A. I don't know; I could not tell what fund he used.

Q. You say that Mr. Frue paid the $5,000 for the benefit of Mr. Loring upon the purchase of the Adams front?

A. I said so.

Q. When did he make that payment?

A. He made that payment about the first of July, 1868; he might have made it before. The money was ready for that purpose from the commencement of the contract, when the arrangement was made.

Q. Do you say that Mr. Loring was informed that that payment was made by Mr. Frue at the time?

A. He was informed in October of that year.

Q. For the first time.

A. That I would not say; but I informed him myself in October.

Q. Did you not write to Mr. Mason on the 27th of June, as follows: "On Monday, the 22d, I telegraphed to Mr. Loring that I had paid here for him $5,000, asking him, upon the receipt of either of my letters, to pay the same amount to you?"

136 A. I did.

Q. Is this letter dated June 26th, '68, at Houghton, written by you to Mr. Loring, at Boston?

A. It is.

Q. Did you say in that letter, "Mason's contract important. Answer. I hope you will get the contract with Mason executed. Frue and I have arranged to pay Edwards $5,000 on the 4th of July, so that you can pay Mason $5,000?"

A. Yes, sir.

Q. Did you not receive a letter from Mr. Loring, dated Nov. 25th, 1868, suggesting the sale of the smelting stock to pay your notes with?

A. It is possible I may have; I have no memorandum of it.

Q. Please look at the paper shown you, and see if that refreshes your mind with reference to your having received such a letter?

A. I have no recollection of it whatever.

The letter is introduced in evidence, and marked defendant's Exhibit "4."

EXHIBIT 4.

BOSTON, *Nov. 25th*, 1868.

C. H. PALMER, Esq., Pontiac.

DEAR SIR: Thinking it very doubtful whether this letter would reach you at Houghton, I address you at home on points which you want to prepare for as far as possible before coming east. Your brief letter of the 13th came to hand yesterday, having a tedious

passage of 11 days. I will hope and trust your expectations in regard to working the mill and mine will be fully realized, though I hope you remained at the lake till Horace arrived, and the arrangements for continuous work were fully completed. I feel great anxiety on this topic, more so from the fact that I get no letters, yours being the only one received since my despatch announcing the suspension.

137 In regard to your own private affairs, I feel compelled to state you are evidently laboring under great misapprehension on my ability to raise any more money on your notes. This fact I deem all important you should be made acquainted with before you leave for the East. Fortunately I was by great efforts able to meet your draft for the $1,200 due the 23d, the day before the receipt of your note, therefore no damage in this instance from the delays of the mail, and it would have been useless to me, even if it had come to hand. You doubtless are aware of other notes falling due the middle of December, and continuing along to the middle of February. Now, the question is, how are you to provide the means to meet them? I will venture the suggestion that you raise all the money possible before leaving for the East, either by sale or on mortgage of your property. By doing thus you may, in part, avoid the great sacrifice on your interest at Houghton: and I would also suggest that you come by the way of Waterbury before coming to Boston, and see what you can do in the sale of your smelting works stock. If you can get thirteen dollars for it, I believe it more than you can get here, and I do not see how you can avoid selling it, and probably the sacrifice would be less than on other stocks that you might be compelled to sell. I do not believe you can sell here, and if you come here first and fail to make sale, then you cannot make so good sale at Waterbury. Have no scruples about putting the control into the hands of the W. people. It is hard to feel the necessity of making these remarks, but console yourself that you are not half so bad off as I am.

Yours, E. T. LORING.

I do hereby certify that I have examined this copy and find it to correspond with the original copy in letter book of E. T. Loring. Boston, December 11th, 1878.

ALBERT LAFAYETTE BURR.

Q. Will you look at these eight notes, dated in the last of the summer and the fall of 1868, purporting to be signed by you, and see whether they are your notes?

138 A. I believe them to be my notes. I would like to have an opportunity to examine these notes critically. I would like some time to compare them. I never saw any of these notes. I signed them perhaps in blank, in large numbers at a time. I never saw one of them afterwards.

Q. You say these are your original signatures?

A. I believe them to be.

The notes are offered in evidence and marked Exhibits 5 to 12 inclusive.

They are for $5,000 each, payable to the order of Elisha T. Loring and signed by the witness.

Q. Look at Exhibit 13, being the copy of a letter purporting to be written by the defendant Loring to yourself, dated Boston, December 18th, 1868, and addressed to you at New York, and see if you remember it?

A. I have not the original of this letter. I have no reason to doubt it. There is nothing in it that I should doubt.

It is admitted in relation to the letters, copies of which are produced by the defendant, that notice was given complainant to produce the same.

Exhibit 13 is offered in evidence and is as follows:

EXHIBIT 13.

BOSTON, *December* 18th, 1868.

C. H. PALMER, Esv., New York.

DEAR SIR: I have advices this morning from Waterbury, on receipt of which I telegraphed to you as follows: "C. H. Palmer, care of A. H. Sibley, 22 Pine street, New York. Will mail certificates to-day for Kingsbury, No. 4 Beekman street. Pay money into 9th National Bank, credit of North." Meaning North National Bank, Boston. On this being done and the cashier advising the cashier of North National Bank, that the deposit has been made on my account it will be all right, the same as though it was paid here. I have made out certificates for transfer of 1,000 shares to F. J. Kingsbury, 125 to you. If it is not convenient for Mr. K. to pay the whole amount into bank on receipt of certificate,
139 please deposit the $5,000 and remit me a memorandum obligation that the $10,000 shall be made available for my use on the 28th instant.

Yours truly, E. T. LORING.

I do hereby certify that I have compared the above with the original copy in letter-book of Mr. Loring, and find it correct.

BOSTON, *December* 11*th*, 1878.

ALBERT LAFAYETTE BURR.

Q. Look at Exhibits 14, 15, and 16, and say whether Exhibit 14 is in your handwriting, and whether Exhibits 15 and 16 are signed by you?

A. Exhibit 14 is signed by me, and the notes Exhibits 15 and 16 are also signed by me.

EXHIBIT 14.

I have this day signed two notes of hand, payable to Elisha T.

Loring or order, on the 8th and 12th March next respectively, each for the sum of $5,103 and 33–100 in payment of two notes of $5,000 each, given by me and paid by him on the 15th and 19th instant.

These notes are given by me with the express understanding that I will meet the payments of them at maturity from other resources than the securities now held in trust by said Loring for any indebtedness of mine to him by reason of his endorsement of my notes or otherwise.

BOSTON, *December 30th*, 1868.

CHARLES H. PALMER.

Exhibits 15 and 16 are promissory notes each for $5,103.33, payable three months after date to order of Elisha T. Loring, signed by the witness, dated respectively on the 5th and 9th of December, 1868.

140 Q. Did you meet those notes with other means in accordance with the terms of that contract?

A. I did not.

Q. Look at Exhibit 17, purporting to be a letter written you at Pontiac, from Mr. Loring, dated Boston, February 3rd, 1869, and say whether you received a letter of which that is a copy?

A. I could not identify that because I have no recollection of it.

EXHIBIT 17.

BOSTON, *February 3d*, 1869.

C. H. PALMER, Esq., Pontiac.

DEAR SIR: On Monday morning I received a letter from Mr. Mason, which the enclosed is copy. Not liking the word "prefer," not being sufficiently definite, I addressed a polite note inquiring how I was to understand him, whether he absolutely declined the extension—herewith you have his reply. I very much regret his decision, having $15,000 of your notes to provide for this month, $5,000 of my own and a dividend on N. D. and W. H. Company, amounting to some $6,000 more. On top of these comes this payment to Mason, which I was really in hopes you would find some one to do it on terms that you could retain for yourself a large interest in 23. The ways and means of raising this money is as yet altogether uncertain, but hope I shall be able to do it without selling any your stocks at present.

Yesterday I sent to Mr. Ross the documents rendered necessary by the vote of the stockholders of the 22d. On receipt I desire you will sign them at once, and have your signature acknowledged before a justice and forward them to Lake Superior with all despatch, as Mr. R. may direct. Anything of importance comes to hand from Lake Superior, please let me know. With many regards to your wife and family, I remain,

Yours truly, E. T. LORING.

141 The complainant, on notice of defendant, produces an original letter purporting to be signed by the defendant Loring and directed to the witness at Pontiac, dated March 23d, 1869.

Q. State whether you received that letter, Exhibit 18 ?

A. Yes, sir.

BOSTON, *March 23rd*, 1869.

C. H. PALMER, Esq., Pontiac.

DEAR SIR: I wrote you on the 16th, since nothing further from you. I write now more particularly for the purpose of advising you that the stringency in the money market still continues even worse this week. I am told that it has been for a long time back, and I have found it so, having been obliged to pay 9 per cent. on Revere Co.'s paper and hard work to get it at that, therefore think myself fortunate in being able to sell your Hecla stock at $80 in accordance with your suggestion of March 6th, and the same will appear to your credit in your account, soon to be forwarded made up to April 1st. I regret very much that Mr. Sibley and Kendall have not yet made ready their report. No doubt many of our stockholders are disappointed, particularly those whose stock is advertised at the lake and in this city. Herewith you have slip embracing the latter, and with that in my name, as trustee, is your 250 shares, having no money to pay the assessment with, hope you will be able to obtain and remit before the sale. Copper is again down to 25 cents and dull, though sales quite recently were at 27 cents. The benefit of the tariff and McKennie new mines he was going to have started in the spring, and a general hurrah, &c., in advance of wages, is all moonshine.

Yours truly. E. T. LORING.

I have had discounted and sent to Frue some $78,000 since close of navigation. E. T. L.

142 Q. Look at a paper shown you, purporting to be a letter signed by yourself, written to the defendant Loring, dated Pontiac, April 5th, 1869, and state whether that is your handwriting?

A. It is.

EXHIBIT 19.

PONTIAC, *April* 5, 1869.

E. T. LORING, ESQ.

DEAR SIR: Your letter containing the 23 contract, and of March 23d came to hand while I was away from home. I have sent the contract to Frue, who alone is the owner of the undivided one-fourth of 23. This I told you in Boston. The assessment due on S. P. can be paid out of what the S. P. owes me for expense and time spent for the Co. You will find in the past two years I have scarcely been at home at all, and most of this time has been on account of S. P. Without stating this more particularly, you will

recollect that you promised I should be paid for this time. You have said so often that you cannot have forgotten it.

If I could at present sell some of [—] property, I should not care so much about it. I have been from home so much the past two years that I find it all I can do just at this time to pay bills for my family.

I have not heard much from Frue or the mine of late. Frue, in his last letter, says that the mine can get copper to the smelting works at 18 cents, and pay a small profit. Frue has not said a word to me about his resigning. I do not understand it. I have only one letter from you about it. In regard to my own money matters, I will say to you this, if I can have time I can bring them out straight. I must have some time to do it. If S. P. shall be able to pay anything, even a little, you must be able to come out well, as with S. P. well managed, something handsome can be made out of it. In regard to Ossipee, the north one-half of 27 ought to be had, and it will come after a little. I have no doubt of this.

143 In regard to Kearsarge and Ossipee, we ought to take up some good men and let them see for themselves. In this way we can get in some new men. There are some in New York that can be got in in this way. With new men we can give new life to our interests. I am glad you sold Hecla. Can't you sell some Ossipee also? I spoke to you before I left Boston of going up the lake to live again as soon as anything should turn up that will give me a support. I want you to bear this in mind, because, as soon as this can be done, it would give me some $30,000 here which I could sell. In this matter I want you to be very careful and not mention this until something turns up definite. Again, if you want me to aid you or our business, it is desirable to keep our matters as close as possible. I shall do all I can to aid you in any way possible. I want you to write me any plans you may have.

Since writing the above I have this telegram from Frue, to which I replied that "there was nothing of the kind whatever. The accounts would show this." What does Frue mean about this?

Yours truly, CHARLES H. PALMER.

Q. Look at a letter purporting to be written to you by the defendant Loring, dated Boston, June 8th, 1869, produced by the plaintiff, and say whether you received such letter?

A. Yes, sir.

Letter is marked Exhibit "20," and is offered in evidence.

EXHIBIT 20.

OFFICE OF THE SOUTH PEWABIC COPPER COMPANY,
No. 31, KILBY STREET, BOSTON, *June 8th*, 1869.

C. H. PALMER, *Pontiac, Michigan.*

DEAR SIR: This will advise you of my safe arrival home,

144 via New York and Waterbury. Found family and friends all as well as usual. Have been rather busy since my return.

I availed myself of first opportunity to examine thoroughly into the correctness of the accounts remitted you from time to time, and I herewith remit the result of this examination based upon *vouchers* actually in hands, and though, in a condensed form, there is no possibility of any mistake about them.

The items of sundries in both debtor and creditor account, embraces all entries *outside* of the transaction with the notes given. With these, I have charged the notes paid from time to time, and credited you with amounts received upon all notes discounted for renewal, though they do not all appear in the accounts rendered as set forth in the statement herewith, nevertheless, the balance due me, $9,449.97, is the same as previously represented in the accounts, and *this over and above* $15,042.19 on land account, and *no mistake about it.* I learned in New York that Mr. Duffield and his brother-in-law McEwan were expected about the 20th June in New York, with the intention of going to Lake Superior. It will be impossible for me to accompany them, and *shall depend* on your meeting them in Detroit and go on with them. The object of their visit is of altogether too much importance for you to fail to accompany them. I will write and telegraph you when they will be in Detroit.

With many regards to Mrs. Palmer and family, I remain truly yours,

E. T. LORING.

Q. Look at a letter purported to be written by you to the defendant Loring, dated Pontiac, June 10th, 1869, and state whether it is in your handwriting?

A. It is.

The letter is offered in evidence, and marked Exhibit 21.

EXHIBIT 21.

PONTIAC, *June 10th*, 1869.

E. T. LORING, Esq.

DEAR SIR: I have your letter. I had examined the account since I saw you in Detroit. Your mistake is in charg-
145 ing me with two notes of $5,000 each, twice over. This you do in your bills receivable. The same has been charged before. You will will see that the notes discounted must always equal, if they do not exceed in number those taken up. I *I* take it that the bills receivable, which are put down at over $20,000, are four notes that had been paid. What is the sundries following them made out of, $1,651.65? When I was in Boston last winter, there were only seven notes out, and you gave me a list of those and the banks at which they were. Before I left, two of them were paid with my money, and you had a balance to my credit, besides nearly enough to pay one other, which left a little more than four notes. These are to be reduced by $8,000 since received by you. In short you make my debt too much either by $10,206.66 or $10,000. This

matter is plain enough, and it will be to you if you examine it. This agrees with all your previous accounts and with all our settlements, and with all the previous accounts of notes which I have. If you get this matter right in your head, it will relieve you of much anxiety, because it cannot be pleasant to increase my account by $10,000 by any mistake. Burr makes the mistake by the way you give him your bills receivable and notes paid. I shall be on hand to go with Duffield. Let me know early as you can. Write me at once. What did you learn of his object in going up?

Truly yours, CHARLES H. PALMER.

I write at once to Frue. Do not fail to put yourself right in my eyes at once. It is very simple.

Q. Please state whether the letter shown you purporting to be written by you to the defendant Loring, dated July 6th, 1869, is in your handwriting?

A. It is.

The letter is offered in evidence, and is marked Exhibit 22.

146 EXHIBIT 22.

PONTIAC, *July 6th*, 1869.

E. T. LORING, Esq.

DEAR SIR: I have your letters. I am ready to go up, and waiting for a telegram from Duffield. I have no letter since I wrote you from Frue. I suppose he is expecting us up as the reason he does not write. I shall write you again when I start. I hope Duffield can save the copper in the tailings. I am yet inclined to think there is something else.

Yours, truly, CHARLES H. PALMER.

I was certain you would find your mistake in my accounts when I saw you in Detroit, but I was dumbfounded when you wrote me from Boston there was no mistake, yet I know you were mistaken.

Q. Look at a letter purporting to be written by the defendant Loring to you, dated September 4th, 1869, and say whether you received said letter?

A. I did.

The letter offered in evidence, and is marked Exhibit 23.

EXHIBIT 23.

BOSTON, *September 4th*, 1869.

C. H. PALMER, Esq., *Houghton.*

DEAR SIR: I have nothing in hand from you since mine of August 30th. My object in writing at this time is to forward copy of the accounts between us, made up to first September, closing your individual account, having paid the last note of yours out-

standing on the 28th ult., passing the balance due on this to your land account. I deem it all important to give you ample notice that this account *must be settled*, at the latest period possible for me to await for it, on the first day of September, 1870. The amount, $15,761.07, and interest till that time, if not sooner paid. I
147 also enclose a copy of your agreement made with me in December last, showing you then anticipated the procuring of funds from other sources than those now held in trust as security for the balance due me. This I still hope you will be able to accomplish, as it would be a most serious matter to me to be compelled to sell at auction the different stocks I hold, to obtain means to meet my own indebtedness due at the time specified, to the extent of about $38,000 incurred in the sale Adams stock under my own guarantee which belonged to the two men, Hodgson and William B. Frue. This is a most unfortunate position to occupy, still I intend to meet it as an honest man should, if it takes the last dollar I have after collecting what is due me, and God knows there will be but precious little left in comparison to what I had when I unfortunately loaned my own to the S. P. C. I do not propose, in view of the demands of my family upon me, to make any further sale or sacrifice of what little I have left till the *last dollar* due is paid, even if it be necessary to sell *all* the securities I hold in trust for the payment of this balance and interest.

You may think me too exacting in my language and overbearing. If so, it is simply because you nor Captain Frue have never appeared to realize the extent of the injuries I have suffered from my connection with these two companies. The greatest of all obligations on me is to pay my honest debts, and my ability to do this is depending upon my collecting every dollar due me. In view of this, I have no other apology for the apparent harshness of the language used.

Yours, truly, E. T. LORING.

Q. Look at a letter purporting to be written by yourself to Mr. Loring, dated Hougton, September, 18th, 1869, and see whether said letter is in your handwriting?

A. It is.

The letter is offered in evidence, and marked Exhibit 24.

148 EXHIBIT 24.

HOUGHTON, MICHIGAN, *Sept. 18th*, 1869.

E. T. LORING, ESQ.

DEAR SIR: I have two letters from you since I wrote. I have been engaged lately with Duffield all the time in his experiments. I am yet unable to state what will be the result. I have no doubt that the copper wasted is as he states, but I am doubtful if he can succeed in saving much of it unless at a great cost. I do not think he is himself certain how he can do it, though he advances many dif-

ferent ideas about it. McEwen is on his way out and will be in New York next week.

The mill is running well, and the mine is giving better rock than it has ever done. The coal bought by Frue is good—in fact, according to Foster and the engineer, the best they have had. I wish they had engaged one thousand tons more. The ashes of this coal are only one-half what they were with the other. Marks has fixed one boiler, and next week all will be done. Clews has, by making false promises, delayed this matter a week. I have no doubt it will be a perfect success. I shall not be surprised if it saves one-quarter of the coal. I may be too sanguine, but I believe it will save all of a quarter. If Duffield does not succeed I think something can be done to save more copper. I shall try and come up to your views in making payment by September, 1870. I shall do all I can. I believe the railroad to L'Anse will be taken hold of by strong parties, and that our lands will then become valuable. The opening on 7 is one of the best, and so estimated by all who have seen it. The time will come, most likely, when this will be of some importance.

I do not think Duffield knows what he will do, and that anything will be known until McEwen arrives.

As soon as all the boilers are fixed I shall write you the result. If we could save all around like this it helps things.

Truly yours, CHARLES H. PALMER.

149 Q. Were not the relations of yourself and Mr. Frue very intimate, both personally and in business matters, during the year 1869?

A. They were intimate.

Q. Did you not, after the date of Loring's deed to him, hold frequent conversations with him in relation to section 23?

A. I saw him, but I have no recollection of my attention being called to the deed or the contract at that time.

Q. The question I asked was whether you did not have conversation in relation to section 23, soon after the date of that deed?

A. I don't recollect any conversations. I was not with him until some time later than that—considerable later than that.

Q. You have stated that you added a postscript to the letter, introduced in evidence, of March 8th?

A. Yes, sir.

Q. Upon what sort of paper was that written?

A. I think it was ordinary commercial paper.

Q. Was it written upon the same kind of paper that the letter was?

A. I think not; that is my impression.

Q. Why was it written upon separate paper?

A. I don't know why it was, unless I had written on a half sheet; I do not remember; I have no recollection in regard to it.

Q. Are you in the habit of keeping copies of your letters?

A. I do not generally, but I occasionally keep copies of letters.

Q. Was that letter written upon the same kind of paper that the copy of the letter was written upon; I mean the postscript to that letter; was it written on the same kind of paper as the copy of the postscript you produce?

A. I think not, but I have no distinct recollection of it.

Q. Was anyone present at the conversation between Loring and yourself, in Detroit, in May, 1869?

150 A. No, sir, nobody was present.

Q. You say that Loring told you of his making a deed to Frue?

A. He spoke of having done it.

Q. Did he not also speak of the contract that he had made with Frue?

A. I think not; I have no recollection of his alluding to that.

Q. When was it that he wanted that $5,000 applied for your benefit and not for Frue's—when did he say anything upon that subject?

A. I don't recollect that I have stated anything exactly in that way.

Q. Do you recollect any conversation with Mr. Loring on that subject, as to whose benefit the $5,000 should be applied?

A. I mentioned to Mr. Loring in October, 1868, that Captain Frue had paid that $5,000. That was in October, 1868, when he was at Houghton. That was the first time I told him what had been done in relation to that $5,000. Afterwards I mentioned it to him at Boston after I went down.

It is admitted that notice was given by the defendant to produce the letters, copies of which have been offered in evidence, and embodied in this deposition.

DECEMBER 26th.

Mr. Palmer, after reading over the testimony heretofore given, is recalled by the complainant, and he is asked by Mr. Post as follows:

Q. I show you a letter of date June 15th, from Mr. Loring to you, and ask you whether you received that letter from Mr. Loring?

A. Yes.

Q. Is that Mr. Loring's handwriting and signatuere?

A. Yes, sir.

Letter is marked Exhibit O, and is offered in evidence.

151 EXHIBIT O.

BOSTON, *June 15th*, 1869.

C. H. PALMER, Esq., Pontiac.

DEAR SIR: I have your favor of the 10th, and your remarks led me to examine more closely into my account, and I am happy to say I have found the error where you mentioned, viz: the entries in the original account under date of 8th and 12th March, for

$5,103.33 each, as bills receivable, are erroneous, having previously charged these notes of $5,000 each on the 6th and 15th July, when I paid them. I still hold them as notes receivable, and when paid will be credited on land account. I herewith remit corrected bill and trust you will be able to remit in time to pay those notes of $5,000 each, due at Barnstable and C. Cod Bank in August, and this will be the shortest method to close all difference with Frue. You will please bear in mind that the balance due me on land account is and must continue on interest at 8 per cent. until paid. I have now near $60,000 due, on which I am obliged to pay this rate, and on part of it even nine per cent. I do not know the particular object of Duffield's present visit with his brother-in-law, although I hope some good may grow out of it. I shall visit them in New York on arrival, and previous to going there will write you from Boston, and telegraph you from New York when they will meet you in Detroit, and you must be ready to go with them.

Yours, E. T. LORING.

Q. I show you a statement of account and ask you whether you received that from Mr. Loring?

A. I received it.

Q. Are you able to state about when this was received?

A. I think it was about June 15th; I could not state positively.

The account is marked Exhibit P, and is offered in evidence.

152 EXHIBIT P.

E. T. LORING, in account with CHARLES H. PALMER.

| | |
|---|---|
| To amount received from 8 notes, account December 31st, 1867 | $38,731 27 |
| To sundries, as per account December 31st, 1867 | 25,579 18 |
| To amount received from 8 notes, account April 30th, 1868 | 38,592 10 |
| To sundries, as per account April 30th, 1868 | 5,457 46 |
| To amount from 7 notes, account December 31st, 1868, | 33,826 95 |
| To sundries, as per account, " " | 22,328 92 |
| To amount from 2 notes, account April 1, 1869 | 9,601 94 |
| To amount from Hecla stock | 8,000 00 |
| To balance on transfer of land account | 1,599 14 |

CR.

| | |
|---|---|
| By cash paid for sundry notes to March 3, 1869 | $115,000 00 |
| By sundries, as per account December 31, 1867, less land account, $13,443.05 and charge of $350, August 9, 1867 | 46,937 09 |
| By sundries, account of April 30th, 1868 | 3,945 50 |
| By sundries, account of December 31st, 1868 | 5,426 03 |
| By sundries, as per account April 1, 1869 | 1,604 02 |
| By balance | 10,804 32 |
| | $183,716 96 |
| March 31st, to balance $10,804 32 | |

Two notes of C. H. Palmer, $5,000 each, not yet due, at Cape Cod and Barnstable banks, will be paid by E. T. Loring at maturity, reducing his indebtedness to C. H. P. to $804.32.

Q. What are the pencil memoranda on this paper?

A. They are made by me.

Mr. POST: We do not design to go in detail into the accounting between these parties at present, because, as we look at it, any decree that should be granted in our favor in the case would almost necessarily involve an accounting to determine how the money matters stood between these parties, and we propose to leave the detail of the accounting to a further reference; but I desire to put some few questions generally with reference to the accounts in response to some things that have been put in by brother Walker on the cross-examination.

153 Q. Whether you have ever been able to separate out from the land account, or what you call the land account, the omnibus account that you spoke of, that part which pertained to you individually, so as to be able to state accurately how the accounting in reference to that stood between you and Mr. Loring?

A. I have not.

Q. Whether you are able to say to-day precisely what amount there should be in that account?

A. No, sir; I would not be able to say.

Q. You recollect the balance which Mr. Loring claimed was due to him from that amount?

A. It commenced with about $11,000.

Q. How afterwards?

A. Immediately $2,000 of interest was added to increase this account, and then $300 in interest, making some $13,000.

Q. Whether you know of any credits which you expect to be able to show upon an accounting that should be credited to that account as an omnibus account that would affect that balance?

A. Yes, there are several items that ought to be credited to that account, transactions that had occurred, and transactions that did occur afterwards.

Q. How to affect the balance?

A. Taking the matter as it was determined in Captain Frue's case, the whole account would have been paid.

Q. The question is to what amount do you expect to show, on an accounting, credits?

A. I expect to show that that account was fully paid.

Q. There have been several notes produced here. Will you state, if you please, what the fact was with reference to your signing notes and delivering to Mr. Loring?

A. I signed bank notes in blocks, sometimes perhaps 20 notes at a time.

Q. Do you know the whole number that were signed?

A. No, sir, I do not, a large number.

154 Q. How were those notes to be used?

A. They were to be used by Mr. Loring for his and my accommodation.

Q. Do you mean they were altogether blank as to amounts and all?

A. I think they were; but they might have been $5,000 notes, with the date left blank.

Q. Whether those notes that have been produced here were notes that were signed in that way?

A. They were.

Q. Do you refer in that answer to all of them—those two attached to the agreement?

A. Those two notes were dated when I was in New York and Waterbury, and I never did remember those specific sums attached to the notes.

Q. The question I asked you is, whether those notes were given the same as the others?

A. They were given the same as the others.

Q. Whether any notes which were so signed were discounted?

A. They were reported to me as discounted.

Q. Who discounted them?

A. Mr. Loring got them discounted.

Q. Who had the proceeds?

A. Mr. Loring.

Q. Did you have the proceeds of those notes other than as they are accounted for to you?

A. Not otherwise than as they are in the account.

Q. In those accounts, whether the discount is deducted from the amount credited you?

A. It is.

Q. Whether in those accounts any interest is charged on the balances?

A. Always.

Q. Were any of those notes renewed?

A. They were renewed.

The five preceding questions are objected to as leading.

155 Q. On the renewal was there any expense?

A. A large discount.

Q. I will ask you whether you had any dealings with Mr. Loring aside from these represented by these two accounts, and this purchase on 23—any other matter of account between you during this time?

A. There was another transaction which was always by itself, 9,000 acres of land at L'Anse, in which Mr. Loring was trustee for myself.

Q. Was any account kept of that?

A. That was an account by itself.

Q. That did not enter into this matter?

A. No.

Q. You testified, I believe, that there had been in none of these accounts, any charge to you for any portion of the purchase money on this land in section 23?

A. I think I did say so.

Q. I will ask you to state whether there was any credit in the account, either with you or Mr. Frue, for the $5,000 paid on the purchase?

A. There was never any account that I was aware of made. That was a transaction by itself.

Q. No account made of it anywhere?

A. No, sir.

Q. I will ask you whether you ever discovered any inaccuracies in this accounting since that was sent to you in June, 1869, or September, 1869?

A. I have discovered, since this transaction, that there ought to have been 160 shares of Franklin stock, which had been sold by Mr. Loring, credited to me, a matter of $10,000 or so.

Q. Will you state, if you please, whether, at any time, there was a sale, or a pretended sale, of your stock by Mr. Loring?

A. There was in September, 1870, a sale of all my stock, including Captain Frue and others, upon this land account.

Q. Did you attend that sale?

A. No, sir; I did not.

156 Q. Did you have notice of it?

A. I did not.

Q. When did you first learn that such a sale was had?

A. I learned in the following month. I think I learned from New York that such a sale had been made.

Q. You may state whether you have any information with reference to whether the sale actually took place?

A. My information is, that the sale did not actually take place.

Q. State whether subsequent to that sale these stocks were held by Mr. Loring?

A. They were held by Mr. Loring.

Q. Did you know when he parted with them finally?

A. I think some time in 1873.

Q. How were those stocks held by him?

A. They were held by him as a trustee.

Q. You may state whether that sale involved any loss.

A. It involved a great loss. The stocks represented valuable property.

Q. Are you able to state the difference in value in these stocks in 1870 and 1873?

A. The difference between the price paid in and the sale was $25,000; he got $25,000 more than they were pretended to be sold for in the first place.

Q. I don't know whether you have stated upon what account he claimed to sell those stocks?

A. The land account.

Q. By the land account you refer to this omnibus account you have already mentioned?

A. Yes, sir.

The testimony is objected to as not proper re-examination.

*Cross-examination.*

Q. You have had a careful consultation with your counsel, have you not, since your direct testimony and cross-examination, upon this subject?

A. Probably five minutes.

157 Q. And no more?

A. No, sir; that is, you mean with reference to this examination.

Q. About what your testimony was to be?

A. That is all.

Q. Did not Mr. Loring furnish you an account of the notes that you had signed in the early part of 1869, or in the very latter part of '68—whether he did not give you a list of notes?

A. Nothing excepting what is rendered in the bills.

Q. Did you not solicit from him a statement of the notes that he held, and did he not furnish it?

A. Not otherwise than are in the account.

Q. Did he not furnish other accounts, from December, 1868, to June, 1869, to you than the one you have now put in evidence?

A. I think he did.

Q. Where are they?

A. I have them.

Q. Will you produce the other accounts that he furnished you during that period?

The witness produces an account.

Q. Was the account now produced by you received about the time of its date?

A. I think it was.

The account produced is marked Exhibit 25.

EXHIBIT 25.

| | |
|---|---|
| April 30th, to balance | $965 54 |
| May 1, cash paid account Weed File Company | 211 47 |
| May 4, to cash paid draft Revere House | 200 00 |
| June 13, to cash paid account Weed File Company | 211 47 |
| August 14, to cash paid his note | 5,000 00 |
| August 14, to cash paid his note | 5,000 00 |
| August 20, to cash paid assessment on Ossipee stock | 843 64 |
| August 22, to cash paid his note | 5,000 00 |
| August 27, " " " | 5,000 00 |
| August 31, " " " | 5,000 00 |
| August 31, to balance of interest to date | 12 43 |
| August 31, to balance | 1,006 74 |
| | $28,451 29 |

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| | | |
|---|---|---|
| September 1, to cash paid his note | | $5,000 00 |
| September 12th, " " " | | 5,000 00 |
| September 28th, to cash paid assessment on 250 shares the S. P., and interest | | 756 28 |
| November 7th, to cash paid on Kearsarge and Ossipee | | 1,800 00 |
| November 20th, draft favor of Mandelbaum | | 1,200 00 |
| December 16th, to cash paid his note | | 5,000 00 |
| December 19th, " " " | | 5,000 00 |
| December 31, balance of interest to date | | 6 27 |
| December 31, difference in dating interest in account to January 1st, 1868 | | 184 47 |
| December 31, to balance | | 4,764 30 |
| | | $28,711 32 |

CR.

| | | |
|---|---|---|
| July 1, by cash dividend D. and L. S. stock, 1,125 shares | | $1,687 50 |
| August 14, by cash proceeds of note | | 4,877 92 |
| August 17, " " " | | 4,860 88 |
| August 18th, " " " | | 4,794 17 |
| August 20, sundries 509 shares Ossipee | $2,460 17 | |
| Interest | 181 25 | 2,641 42 |
| August 27, by cash proceeds of note | | 4,794 17 |
| August 31, " " " | | 4,795 28 |
| | | $28,451 29 |
| By balance | | 1,006 74 |
| September 3d, by cash proceeds of note | | 4,860 88 |
| September 12th, " " " | | 4,843 75 |
| November 7th, amount from treasurer Kearsarge Company | | 3,000 00 |
| December 21, amount from F. R. Kingsbury | | 5,000 00 |
| December 28th, " " " | | 10,000 00 |
| | | $28,711 32 |
| By balance | | 4,764 30 |

## EXHIBIT 26.

### C. H. PALMER IN ACCOUNT WITH E. T. LORING.

| 1869. | |
|---|---|
| January 6, to cash paid his note | $5,000 00 |
| January 15, " " " | 5,000 00 |
| February 17th, to cash paid for renewing note | 200 00 |
| February 20, to cash paid his note | 5,000 00 |
| March 3d, " " " | 5,000 00 |
| March 8th, to bills receivable | 5,103 33 |
| March 12th, " " | 5,103 33 |
| March 20th, to expense of sale of stock | 25 80 |
| March 31, to interest account | 162 67 |
| | $30,595 13 |

159

1869. CR.

| | |
|---|---|
| December 31, by balance | $4,764 30 |
| February 16, by cash, amount from his note | 4,801 94 |
| March 20, by cash, sale of Hecla stock | 8,000 00 |
| March 31, by balance | 13,028 89 |
| | $30,595 13 |
| To balance | 13,028 89 |
| To note at Cape Cod Bank | 5,000 00 |
| To note at Barnstable Bank | 5,000 00 |
| | $23,028 89 |

| | |
|---|---|
| By balance from land account | $15,042 19 |
| " " " | 7,986 70 |
| | $23,028 89 |
| To balance | 7,986 70 |

BOSTON, *March 31st*, 1869.

ELISHA T. LORING.

Q. When did you receive this account that brings the account up to the last of December, 1868, being Exhibit 25?

A. I believe about its date.

Q. Did you upon receiving that account take any exceptions to it and so inform Mr. Loring?

A. I did not see anything in that account particularly that I excepted to.

Q. When did you receive the account marked number 26th, dated March 31?

A. I think I must have received it about June 8th.

Q. Did you not receive it about the time of its date and receive the other one that you have offered in evidence about June?

A. I think I did.

Q. Did you take any exceptions to that account?

A. I did.

Q. How?

A. By letter.

Q. When did you write that letter?

A. I wrote after the receipt of that account?

Q. Can you fix the time?

160 A. No, sir; I cannot now. I have not looked in reference to it. It is an account I would except to any way.

Q. Have you any distinct recollection of excepting to it?

A. I have.

Q. Did you get any reply from Mr. Loring excepting to it?

A. I believe I did.

Q. Where is that reply?

A. That I don't know. There are corrections made after that account. Large corrections.

Q. The question that I asked was, where was that letter that Mr. Loring replied to you?

A. I don't recollect that I have it.

Q. Do you say you signed these notes which you have mentioned in blocks without there appearing on the face of the notes the amounts for which they were to be drawn?

A. I don't recollect whether the $5,000 was put upon them or not, I do not remember. I know they were signed in large numbers at a time. I presume very likely they were $5,000 notes, but I do not recollect.

Q. Were not the notes that are connected with your contract in December, 1868, signed at the same time that the contract itself were signed?

A. I think not. I could not tell without looking at the contract and looking at the notes again.

Q. Please look at the notes and contract and state what you think about it?

The witness does so, and states that he thinks they were signed at the same time.

Q. You say that Loring claimed that the sale that he made of your stocks was made upon the land account—that claim was in writing, was it not?

A. I think it was in writing; I don't recollect.

Q. Did not Mr. Loring inform you by letter in advance of that sale that he should sell the stock unless you paid up his account?

A. He did. That is, I received letters of that tenor.

161 Q. Did he not inform you of the precise time when they would be sold?

A. He might and might not.

Q. Did he not, after the sale, inform you by letter what had been done with those stocks, and whether you could have them at what they were sold for?

A. He wrote me that I could have them by paying a large amount of assessments in addition to what they were sold for.

Q. Upon the very stocks?

A. Yes, sir.

Q. Have you those letters of his in which he gave you notice of the time and place of sale of those stocks?

A. I think I have.

Q. Can you now produce them here?

A. I cannot.

Q. Can you produce the letters that he wrote you after the supposed sale, in which he informed you that you could have the stocks by paying what they sold for?

A. I think I can produce those letters.

Q. Can you produce them now?

A. No, I cannot.

*Re-direct.*

Q. With reference to the interest on the two sides of the land account, whether there was any difference in the rate?

A. Seven per cent. was against me and six per cent. for me.

Q. The interest was charged on the balances at seven per cent. on one side and six on the other?

A. Yes, sir.

Q. When did you discover that?

A. I never noticed it until I looked into these accounts.

Q. How long ago?

A. Perhaps four or five months ago.

CHARLES H. PALMER,

162 In the Circuit Court of the United States, for the Eastern District of Michigan. In Equity.

CHARLES H. PALMER, Complainant,
*vs.*
ELISHA T. LORING and CHARLES A. WELCH, Defendants.

It is hereby admitted that the contract with Mr. Mason, referred to as enclosed in the letter of June 19, 1868, from complainant to defendant Loring, (being Exhibit G, attached to Mr. Palmer's testimony in said cause,) is lost or destroyed, and cannot be now produced, and it is stipulated that the testimony of Mr. Palmer and Mr. Frue, as to the contents of said contract, shall not be objected to for want of production of the original, or of notice to produce the same, or for failure to prove its loss or destruction.

C. I. WALKER,
*Solicitor for Defendants.*

Virginia Palmer sworn for complainant.

Examined by Mr. POST:

Q. I call your attention to Exhibit L, and ask you if you have ever seen that before?
A. I have.
Q. When?
A. It was in March, 1869.
Q. Whose name is that signed to the bottom?
A. It is my name.
Q. Did you put that signature there?
A. I did.
A. At what time?
A. When it was written, in March, 1869.
Q. Whether you recollect having compared that with the original at the time?
163 A. I remember my father told me to sign my name so as to remember it. He told me to remember the circumstances.
Q. This memorandum at the bottom, which you signed, says that the letter was directed and posted by you; how is that?
A. It was.

*Cross-examination.*

By Mr. WALKER:

Q. Have you any means of fixing the date of that—any memorandum of the date—except as it was mentioned on this paper?
A. Not particularly, only it was in March, 1869—the first part of the month.
Q. How are you able to recollect that general date without this memorandum?
A. In reading the copy over with him, my father wished me to remember the circumstances. I have a good memory of dates.
Q. Did you see the original of which this was a copy?

A. I did.
Q. Was that the whole letter which was written?
A. Yes, sir.
Q. Nothing else was written at the time except this?
A. No, sir.
Q. And what was written here was put into an envelope by you?
A. Yes.
Q. Without any other paper?
A. Yes, sir.
Q. And posted?
A. Yes, sir.
Q. This was not written on a sheet with another letter?
A. No, sir.
Q. Nor was it put with another letter?
A. Not that I remember.
Q. You have a clear recollection, have you not, that this was all that was put into the envelope?
164 Yes, sir.
Q. This memorandum was entirely written by your father?
A. Yes, sir.
Q. Did you read it over at the time?
A. I did.
Q. The whole of it?
A. Yes, sir.
Q. And signed it?
A. I did.
Q. Were these erasures in it?
A. I believe they were.
Q. Were those erasures in the copy that was sent in the envelope?
A. I am not certain as to that.
Q. Do you know whether that which was sent was written first, or this was written first?
A. This was written first.
Q. Who copied that which was sent in the envelope?
A. My father did.

*Re-direct.*

Q. You have seen this and read it recently, haven't you. I call your attention to the fact that that is headed P. S.—whether that refreshes your recollection as to whether there was any letter with it at the time?
A. I do not remember the other letter.

VIRGINIA PALMER.

165 *Defendant's Proofs.*

In the Circuit Court of the United States for the Eastern District of Michigan.

CHARLES H. PALMER, Complainant,
*vs.*
ELISHA T. LORING and CHARLES A. WELCH, Defendants.
} In Equity.

Deposition of Elisha T. Loring, taken upon interrogatories annexed to a commission, and under and by virtue of a stipulation.

First. What is your name, age, and residence?

A. Elisha T. Loring; age, 74; residence, Boston, Massachusetts.

Second. Are you acquainted with the complainant, Charles H. Palmer, and how long have you known him?

A. Yes; about twenty years.

Third. Did you, in June, 1868, make contract with Thomas F. Mason, a copy of which is annexed to the bill of complaint in this case, for the purchase of some lands on section number 23, near the Hecla mine, Lake Superior; and if so, at whose request did you make said purchase?

A. Yes; I made such contract with Mason, at request of C. H. Palmer, and having seen a copy of the bill of complaint, believe the copy annexed to the bill of complaint corresponds with the original contract.

Fourth. Did you, at the time of said purchase, expect any person to become interested with you in the same; and if so, whom, and in what proportions?

A. At the time of said contract I expected William B. Frue and Charles H. Palmer to be interested with me, Frue to have one-quarter and Palmer one-quarter, each paying his proportional part of the purchase.

Fifth. Did you see the complainant at Houghton, Lake
166 Superior, in October, 1868, and did he then inform you who had advanced five thousand dollars paid to you toward said purchase, soon after it had been made; who did he say had made such advancement?

A. I had interview with complainant at Houghton, Lake Superior, in October, 1868, on business connected with South Pewabic Copper Co., but have no recollection of any conversation with him at that time touching the purchase in question; but subsequently, in December following, before second payment was made to Mason, I saw Palmer in Boston, in my office, and agreed to take the payment of the $5,000, which Palmer said had been made by Frue on account of the Adams Mining Co., as payment on account of one-quarter of section 23, and that I should hold three-fourths for myself, unless a further payment was made by him or Frue.

Sixth. If you state that you did see him, and received such information from him, state what was said, if anything, at the same time, about the said Palmer paying for any interest in said purchase?

A. I have answered this question in the preceding one; I can state nothing further.

Seventh. Did you write to said Palmer, about November 25th, 1868, a letter addressed to him at Pontiac, Michigan, suggesting the sale, by said Palmer, of some smelting stock; and if so, did you keep a copy of said letter; if yea, please to annex a copy thereof to this deposition, as an exhibit?

A. I did write such letter, of which I took press copy at the time, and annex copy herewith. [Exhibit C.]

Eighth. Did you see said Palmer in Boston in December, 1868; and if so, did you then have any conversation with him as to the disposition of his smelting stock; and if so, was anything said about applying the proceeds, or any portion thereof, towards the payment then about falling due on the said contract of purchase with Mason; and if so, what was said?

A. I saw him in Boston, in my office, in December, 1868. Had conversation with him as to disposition of smelting works
167 stock, but nothing whatever was said about applying the proceeds of such stock, or any portion of the proceeds, towards the payment then about falling due on said contract with Mason, but the proceeds were to be applied to the payment of his running account with me.

Ninth. Who paid the installment on the Mason contract, in December, 1868; if you paid it, state to whom you paid it; and if you have a copy of the letter in which that remittance was made, please attach it to your deposition?

A. I paid the installment upon the Mason contract in December, 1868, and paid it to Thomas F. Mason, and annex herewith copy of letter enclosing remittance. [Exhibit D.]

Tenth. Did you write, about this time, to said Palmer, in New York, under date December 18, 1868, in relation to the proceeds of the smelting stock; and if so, annex a copy of said letter, if you have one?

A. I did so write to Palmer, in New York, and annex herewith a copy of said letter. [Exhibit E.]

Eleventh. Did you about this time, and when, receive from said Palmer, or from any one for him, the proceeds of this smelting stock; if so, how was it applied; was any por[tion] of it applicable, or applied as part payment upon the Mason contract, or for an interest claimed by said Palmer in the purchase from said Mason?

A. I did receive money on account of this stock, December 21 and December 28, 1868, from F. J. Kingsbury, of Waterbury, to whom I transferred certificate of stock. No part of this money was applied as part payment on the Mason contract, or for an interest claimed by said Palmer in the purchase from said Mason, but it

was passed to Palmer's credit on his general account with me, and this was done with his knowledge and assent at the time.

Twelfth. Who paid to Mason the balance due on his contract in February, 1869; if you did so, state whether any of the funds were furnished by Mr. Palmer, or whether he ever paid you in any way for any interest which he claimed in said Mason purchase?

A. I paid Mason the balance due on said contract in February, 1869, and no funds were furnished by Palmer, either directly
168 or indirectly, on account of any interest claimed by him in said Mason purchase, and he never paid me in any way for any interest in said Mason purchase.

*Thirteenth.* Did you, previous to writing said last-mentioned letter, write to Mr. Palmer, the complainant in this case, under date of February 3d, 1869, relating thereto; if so, annex a copy of said letter to your deposition?

A. I did write to Palmer under date of February 3, 1869, took press copy of said letter, and annex copy herewith. [Exhibit F.]

*Fourteenth.* It is already in evidence that you wrote to said Palmer a letter dated February 22d, 1869, relating, among other things, to any interest which he might claim in the Mason purchase; did you, soon after that time, or at any time, receive a letter from said Palmer, dated February 26, 1869, in which he wrote, in substance, as follows: "I have been willing to unite in any plan mutually to aid us, but failing in this, cannot consent to lessening my interest in section 23;" state if you received any such letter at any time, and of any date?

A. I am positive that no such letter was ever received by me.

*Fifteenth.* There has been introduced in evidence an original letter, written by the complainant, Mr. Palmer, to yourself, dated March 8, 1869, and a copy of which is hereunto annexed, marked "A;" state whether, accompanying that letter there was a postscript, of which the annexed paper, marked "B," is a copy; whether you ever received from said Palmer a paper substantially like that postscript?

A. I am positive that no such postscript was ever received, or any paper like that of which Exhibit "B" purports to be a copy.

*Sixteenth.* Did you, in May, 1869, enter into a written contract with Mr. Frue, in relation to the lands referred to in section 23, a copy of which contract is annexed; if so, state whether at that interview you refused to deed to Mr. Frue the one-quarter interest which he claimed to have paid for in said purchase, unless he would enter into that contract; or whether, in any way, said Frue was so compelled to enter into said contract, or entered into it with reluctance?

169 A. I did enter into such a contract with Mr. Frue, in 1869, very much against my interest and inclination at that time. I did not refuse to deed him his portion of the land unless he entered into said contract. In no way whatever was he compelled

to enter into said contract; it was his own proposal, and I most unwillingly agreed to it, rather than quarrel with him in relation to the land in question.

*Seventeenth.* Did you, soon after this, have an interview with said Palmer, in Detroit, and if so, did he, at that interview, make any claim whatever to any interest in the purchase of section 23?

A. I recollect having an interview with Mr. Palmer in Detroit, on my return from the Lake, but no claim at that time was made by him to any interest whatever in the purchase of section 23; neither did he make any claim to any interest in this land in a subsequent interview, in Detroit, in October, 1870.

*Eighteenth.* What was the condition of the account between you and said Palmer from December 1, 1868, to July 1, 1869; which way was the balance, and what was the lowest sum of that balance during this whole time?

A. From the 1st of December, 1868, when the balance against Palmer in my favor was $11,162.07, to July 1st, 1869, when the balance in my favor was $23,566.79; the balance was always in my favor, and the balance in my favor was the lowest December 30, 1868, when it was $6,162.07, as per account annexed. [Exhibit G.]

*Nineteenth.* Did you ever charge him in account with any sum, either for any payment on the Mason contract, or for any share in that purchase?

A. No charge whatever was ever made against Palmer in account for any payment on the Mason contract, or for any share in that purchase.

*Twentieth.* State whether said Palmer, at any time after your letter of February 22d, 1869, already in evidence, and prior to the filing of his bill of complaint in this case, ever made any claim to
170 you of having any interest in the Mason purchase; and if he did ever make any such claim, state when, where and how it was made?

A. No claim whatsoever, to an interest in the Mason purchase, was made on me by Mr. Palmer, after my letter of February 22, 1869, prior to the filing of his bill of complaint.

E. T. LORING.

*Exhibits to Loring's Depositions.*

"A," is letter given as Exhibit K, Palmer's testimony.
"B," is postscript given as Exhibit L, " "
"C," is letter " Exhibit 4, " "
"D,"

BOSTON, *Dec.* 17, 1868.

THOS. F. MASON, ESQ.,
*New York,*

DEAR SIR: Your favor of the 15th was duly received, and in compliance with your request, I herewith enclose d'ft of the North Nat. B'k on the Ninth Nat. B'k, New York (New York), for the amount called for in your note, say, eight thousand and twenty-five

dollars, which please endorse on the contract, and acknowledge the receipt of the same. Yours resp'y,

E. T. LORING.

"E," is letter given as Exhibit 13, Palmer's testimony.
"F," is letter given as Exhibit 17, " "

"G."

*Statement of Account between C. H. Palmer and E. T. Loring, from Dec. 1, 1868, to July 1, 1869.*

| 1868. | | | |
|---|---|---|---|
| Dec. 1. | To balance on account | $11,162 07 | |
| 16. | " cash paid his note at b'k | 5,000 00 | |
| 19. | " " " | 5,000 00 | |
| | Cr. | | |
| 21. | By cash from sale of smelting work stock | | $5,000 00 |
| 28. | " " " " | | 10,000 00 |
| 31. | " balance " " " | | 6,000 00 |
| | | $21,162 07 | $21,162 07 |

171

| 1869. | | | |
|---|---|---|---|
| | To balance | $6,162 07 | |
| Jan. 6. | " cash paid his note at b'k | 5,000 00 | |
| 15. | " " " " | 5,000 00 | |
| Feb. 30. | " " " " | 5,000 00 | |
| M'ch 3. | " " " " | 5,000 00 | |
| 8. | " am't of note due and pay'l this date, unpaid | 5,103 03 | |
| 12. | " am't of note due and pay'l this date, unpaid | 5,103 33 | |
| | Cr. | | |
| Feb. 16. | By cash rec'd from dis't of his note | | 4,801 94 |
| M'ch 20. | " " sale of Hecla stock | | 8,000 00 |
| July 1. | " balance | | 23,566 79 |
| | | $36,368 73 | $36,368 73 |
| | To balance | $23,566 79 | |

172 *Complainant's Rebutting Proofs.*

Circuit Court of the United States for the Eastern District of Michigan.

CHARLES H. PALMER, Complainant,
*vs.*
ELISHA T. LORING AND CHARLES A. WELCH, Defendants. } In Equity.

Testimony taken, by consent, by Charles Flowers, U. S. commissioner, on the 17th of February, 1879, at Detroit.

Mr. Post and Mr. Seager appeared for the complainant; C. I. Walker for the defendants.

*Charles H. Palmer recalled.*

Examined by Mr. POST:

Question. I see that Mr. Loring, in his deposition, in response to the fifth interrogatory, says that in December, 1868, before the second payment was made to Mason, he saw you in his office in Boston, and agreed to take the payment of the $5,000, which you said had been made by Frue on account of the Adams Mining Company, on account of one-quarter of section 23, and that he should hold three-fourths for himself, unless a further payment was made by you or Frue; what have you to say about that agreement?

A. The $5,000 that was paid at Houghton had been previously arranged to apply on section 23. The arrangement had been previously made, as I think I testified before, and there was no agreement or conversation at that time, or any other time or place, that he should hold three-quarters of section 23, unless more money was paid.

Q. Then, in response to the fourth interrogatory, Mr. Loring says, in his deposition, that he expected Mr. Frue and you to be interested with him in this Mason purchase, you each to have a quarter, paying your proportional part of the purchase; what have you to say with reference to that?

173, 174 A. The agreement, as I have before stated, at the time of the purchase and immediately thereafter, was that each should have one-third of the property; but afterwards, in January, Captain Frue, as I before stated, wrote me that he had lost confidence in Mr. Loring in consequence of the sale of the Calumet stock, and he was afraid he should lose the $5,000 which he had already paid upon section 23, and wishing me to obtain from Mr. Loring an acknowledgment that he had paid that $5,000 on section 23. In this way, of course, a quarter was spoken of, but it had nothing to do with my interest whatever.

Objected to as not responsive and incompetent and immaterial.

Q. What I wanted to get at was, whether the quarter interest was mentioned at the time of the purchase, or about the time?

A. No, sir; it was not.

Q. When was it first spoken of as a quarter interest, so far as you recollect?

A. That is the only instance in relation to that $5,000.

CHARLES H. PALMER.

175, 176 And afterwards to wit: on the 18th day of October, A. D. 1878, a certain notice to place on calendar, was filed in the office of the clerk of this court, which notice was in the words and figures following, to wit:

*Notice to Place on Calendar for November Term*, 1878.

The Circuit Court of the United States for the Eastern District of Michigan. In Chancery.

CHARLES H. PALMER, Complainant,
*vs.*
ELISHA T. LORING and CHARLES A. WELCH, Defendants.

To the Clerk of said court:

You will please place the above-entitled cause on the calendar for the ensuing term.

Yours, &c., C I. WALKER,
*Sol. for Defendants.*

DETROIT, *October 18th*, 1878.

Endorsed: No. 1982. U. S. Circuit Court for the E. D. Mich. In chancery. Charles H. Palmer, compl't, *vs.* Elisha T. Loring *et al.*, deft's. Notice to place on calendar filed October 18th, 1878. Jno. Graves, dep'y cl'k.

177 And afterwards, to wit, on the 15th day of November, A. D. 1878, a certain affidavit was filed in the office of the clerk of this court, which affidavit was in the words and figures following, to wit:

*Affidavit of Ashley Pond, for extension of time to take testimony.*

Circuit Court of the United States for the Eastern District of Michigan. In Chancery.

CHAS. H. PALMER *vs.* ELISHA T. LORING and CHARLES A. WELCH.

EASTERN DISTRICT OF MICHIGAN, *ss:*

Ashley Pond, being duly sworn, deposes and says: that he is solicitor of record of the complainant in this cause; that when he appeared as solicitor it was the understanding between himself and Mr. Palmer, that S. F. Seager, Esq., of Lansing, should take the active charge of the conduct of the proceedings, and that deponent should, in fact, act as counsel. That the cause came to issue by filing replication on the 19th day of July last; that during the month of August, as deponent recollects, Mr. C. I. Walker, solicitor for the defendants, was absent from the city and State; that during the early part of August the time of both deponent and Mr. Seager was taken up in another case pending in this court, and so was nearly the entire of the months of September and October, and it was impossible for them to give attention to the taking of evidence in this case. Deponent on several occasions called Mr. Seager's attention to the matter and requested him to call upon Judge Walker and obtain a stipulation extending the time, but it seems that he did not do so, and the time to take evidence expired about the middle of October; from that time on until the first of November,

both deponent and said Seager were almost continually engaged in this court, and were so engaged at the time of the service of the notice of hearing of the case for the present term. Deponent is advised and believes that the evidence on behalf of complainant can be concluded within thirty days, and will stipulate that the cause may be brought to a hearing at any time after the evidence is complete, without further notice of hearing.

ASHLEY POND.

178 Sworn and subscribed before me this 15th day of November, A. D. 1878,

ADDISON MANDELL,
*Commissioner Circuit U. S., Eastern Dis't of Mich.*

Endorsed: No. 1982. United States circuit court, eastern district [of] Michigan, in equity. Charles H. Palmer *vs.* Elisha T. Loring *et al.* Affidavit filed November 15th, '78. A. Mandell, clk.

179 And afterwards, to wit, and now on this day, that is to say: at a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment, at the district court room in the city of Detroit, on Friday, the fifteenth day of November, in the year one thousand eight hundred and seventy-eight.

Present: The Honorable Henry B. Brown, district judge.

CHARLES H. PALMER, Complainant,
*vs.*
ELISHA T. LORING and CHARLES A. WELCH, Defendants. } In Equity.

On motion of Mr. Pond, solicitor for complainant, and on reading and filing affidavit, Mr. C. I. Walker, of counsel for said defendant being present and opposing, it is ordered that the time for taking testimony in this cause be extended thirty days from and after this day.

180 And afterwards, to wit, on the 17th day of February, A. D. 1879, a certain note of issue was filed in the office of the clerk of this court, which note of issue was in the words and figures following, to wit:

*Note of issue for March term*, 1878.

In the Circuit Court of the United States for the Eastern District of Michigan.—In Equity.

CHARLES H. PALMER, Compl't,
*vs.*
ELISHA T. LORING AND CHARLES A. WELCH, Def'ts.

To the Register of said court.

You will please enter the above-entitled cause upon the calendar

for the next ensuing March term of said court, notice of hearing thereon having been served upon Ashley Pond, Esq., solicitor for said complainant.

Yours, etc.,

C. I. WALKER,
*Sol'r for Defendants.*

Endorsed: No. 1982. U. S. circuit court of the eastern district of Michigan. In equity. Charles H. Palmer, comp't, *vs.* Elisha T. Loring *et al. precipe*, to place on calendar for March term, 1878. Filed February 17th, 1878. Jno. Graves, dep'y cl'k.

181 And afterwards, to wit, and now on this day, that is to say, at a session of the circuit court of the United States for the eastern district of Michigan continued and held pursuant to adjournment, at the district court room, in the city of Detroit, on Monday the twenty-first day of April, in the year one thousand eight hundred and seventy-nine.

Present: The Honorable Henry B. Brown, district judge.

CHARLES H. PALMER, Complainant,
*vs.*
ELISHA T. LORING AND CHARLES A. WELCH, Defendants.
} In Equity.

This cause now again coming on to be heard upon pleadings and proofs, the hearing having commenced on Saturday the 19th inst., the arguments of counsel are resumed, and the case continued for further hearing.

182 And afterwards, to wit, on the 21st day of April, A. D. 1878, a certain stipulation was filed in the office of the clerk of this court, which stipulation was in the words and figures following, to wit:

*Stipulation Extending Time to Take Testimony.*

In the Circuit Court of the United States, for the Eastern District of Michigan. In Equity.

C. H. PALMER, Compl't, *vs.* E. T. LORING, Def't.

It is hereby stipulated in this case that the complainant shall have to the first day of January next to complete his testimony, and that the defendant may have thirty days thereafter within which to take his testimony.

Dated December, A. D. 1878.

ASHLEY POND,
*Solicitor for Comp'lt.*
C. I. WALKER,
*Solicitor for Def't.*

Endorsed: No. 1982. U. S. circuit court eastern district of Michigan. In equity. Charles H. Palmer *vs.* Elisha T. Loring &

Charles A. Welch. Stipulation. Filed April 21st, 1879. Jno. Graves, dep'y cl'k.

183 And afterwards, to wit, on the 21st day of April, A. D. 1879, a certain admission and stipulation was filed in the office of the clerk of this court, which admission and stipulation was in the words and figures following, to wit:

*Admission and Stipulation with reference to loss of letter from Palmer to Loring, Dated June* 19, 1868.

In the Circuit Court of the United States for the Eastern District of Michigan. In Equity.

CHARLES H. PALMER, Complainant,
*vs.*
ELISHA T. LORING & CHARLES A. WELCH, Defendants.

It is hereby admitted that the contract with Mr. Mason, referred to as enclosed in the letter of June 19, 1868, from complainant to defendant Loring, being Exhibit D attached to Mr. Palmer's testimony in said cause, is lost or destroyed, and cannot be now produced; and it is stipulated that the testimony of Mr. Palmer and Mr. Frue as to the contents of said contract shall not be objected to for want of production of the original, or of notice to produce the same, or for failure to prove its loss or destruction.

C. I. WALKER,
*Solicitor for Def't.*

Endorsed: No. 1982. U. S. circuit court east. dist. of Mich. In equity. Chas. H. Palmer *vs.* Elisha T. Loring & Chas. A. Welch. Admission and stipulation. Filed April 21st, 1879. Jno. Graves, dep'y clk.

184 And afterwards, to wit, and now on this day, that is to say at a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment at the district court room in the city of Detroit, on Monday, the twenty-eight day of April, in the year one thousand eight hundred and seventy-nine. Present the Honorable Henry B. Brown, district judge.

CHARLES H. PALMER, Complainant,
*vs.*
ELISHA T. LORING AND CHARLES A. WELCH, Defendants. } In Equity.

This cause now again coming on to be heard upon pleadings and proofs, the arguments of counsel are concluded, and the cause submitted to the court for decision.

185 And afterwards, to wit, on the 8th day of May, A. D. 1879, complainant's taxed bill of costs was filed in the office of the

clerk of this court, which bill of costs was in the words and figures following, to wit:

*Complainant's Taxed Bill of Costs.*

State of Michigan, the Circuit Court of the United States for the Eastern District of Michigan. In Equity.

CHAS. H. PALMER, Complainant,
*vs.*
ELISHA T. LORING AND CHAS. A. WELCH, Defendants.
} Bill of Costs.

| | | |
|---|---|---|
| Solicitor's fee on final hearing | | $20 00 |
| Marshal's fees: | | |
| Subpœna returned *non est inventus* | | 2 00 |
| Depositions—Frue | $2 50 | |
| Mason | 2 50 | |
| Palmer | 2 50 | |
| Miss Palmer | 2 50 | |
| Loring | 2 50 | |
| | | 12 50 |
| Clerk's fees, as per memorandum of A. Mandell | | 14 15 |
| Master's fees—Testimony at N. Y | 15 00 | |
| Testimony at Detroit | 63 00 | |
| | | 78 00 |
| Printer's bill, not included in above | | 126 00 |
| Three certified instruments, and filing *lis pendens* | | 5 00 |
| | | $257 65 |

We consent to taxation as above.
May 6, '79.

C. I. WALKER,
*Solicitor for Deft.*
S. F. SAEGER,
*Sol'r for Plff.*

EASTERN DISTRICT OF MICHIGAN, *ss:*

I hereby tax the foregoing bill of complaint, costs of complainant at the sum of two hundred and fifty-seven $\frac{65}{100}$ dollars—$257.65.

A. MANDELL, *Clk.*

May 6, 1879.

Endorsed: No. 1982. The circuit court of the United States for the eastern district of Michigan. In chancery. Charles H. Palmer, compl't, *vs.* Elisha T. Loring *et al.* Def'ts bill of costs. Received and filed May 6, 1879. A. Mandell, clk.

186 And afterwards, to wit, and now on this day, that is to say, at a session of the circuit court of the United States for the eastern district of Michigan, continued and held at the district

court-room, in the city of Detroit, on Friday, the twenty-third day of May, in the year one thousand eight hundred and seventy-nine. Present, Honorable Henry B. Brown, district judge.

CHARLES H. PALMER, Complainant,
*vs.*
ELISHA T. LORING and CHARLES A. WELCH, Defendants.
} In Equity.

This cause coming on to be heard on pleadings and proofs, and Messrs. Hoyt Post, S. F. Seager, and Ashley Pond having been heard on behalf of said complainant, and Charles I. Walker, Esq., having been heard on behalf of said defendants, after due deliberation by the court, is ordered, adjudged, and decreed, and the court doth hereby order, adjudge, and decree, as follows:

1. That the said defendant, Elisha T. Loring, did take and receive the contract with Thomas F. Mason, dated June 18th, 1868, and described and set forth in the bill of complainant in said cause, for the purchase from said Mason of the north half of the northwest quarter and the northwest quarter of the southwest quarter of section twenty-three, (23,) in township fifty-six, (56,) north of range thirty-three (33) west, in the county of Houghton and State of Michigan, in trust for himself, one William B. Frue, and the said complainant, in equal undivided interests; and that the same and the lands therein described were in the hands of said Loring, charged with a trust in favor of said complainant, to the extent of an undivided one-third interest therein; and that said trust became and was, from the execution and delivery of said contract, a vested interest in said complainant, subject to the payment by him of his full proportion of the purchase money and the interest thereon; and that the said complainant has made no payment to the said Loring, which he directed to be applied, or which was by said Loring credited or applied, specifically to and upon the said purchase.

2. That the legal title to said land, subsequently acquired by said Loring from said Mason, in pursuance of said contract, was subject to and charged with said trust in favor of said complainant.

3. That the deed from defendant Loring to the defendant Welch, mentioned and set forth in the bill of complaint in said cause, was in violation of the rights of said complainant, and that said Welch took said title under said deed, and now holds
187 the same, charged with and subject to said trust in favor of said complainant.

4. That it be referred to Herschel Whitaker, as special master, to take and state an account between said complainant and said defendant Loring, embracing all their dealings, including the aforesaid purchase from said Mason, and to take proofs thereon; and that, to this end, the said complainant and the said Loring each prepare and submit to said master, within thirty days, a detailed and sworn statement of said accounts between the parties

relating to all their dealings and transactions with each other, and that each of them produce, before said master, his books of account containing the entries of said dealings and transactions, and such vouchers and other papers as he has relating to, or bearing upon said accounts, and that each of them submit himself to a full examination and cross-examination thereon before said master; that the said master is authorized and directed to proceed to Boston, in the commonwealth of Massachusetts, for the purpose of the examination of said Loring, and any witness that either party may there produce, and to receive and examine any books, papers and vouchers; and that said examination and production of evidence before said master, whether in Boston or in this State, be upon reasonable notice to the solicitors of both parties; and that said master report to the court his doings under said reference, together with the proofs taken thereon; and that, if upon such accounting the court shall adjudge that there is any sum due and owing from said complainant to said Loring, the said complainant pay the same into the registry of this court within such time as the court shall then direct.

5. That, upon such payment being made, the said defendants, Loring and Welch, shall, within such time as the court shall then direct, release and convey unto said complainant an undivided one-third interest of, in, and to said premises above described by a conveyance in due form of law, and that, in default thereof, this decree and said subsequent decree directing such conveyance shall stand in lieu of such conveyance, and invest in said complainant the full right, title, and interest of, in, and to an undivided one-third of said lands and premises.

6. That the said defendants, and each of them, be, and they hereby are, enjoined from conveying or in any manner encumbering or disposing of the said undivided one-third interest of said complainant in said lands and premises until the further order of the court.

188 7. That the question of costs be reserved to the final hearing of said cause upon the incoming of said master's report.

Endorsed: No. 1982. In United States circuit court eastern district of Michigan. In equity. Charles H. Palmer, compl't, *vs.* Elisha T. Loring and Charles A. Welch, deft's. Decree passed, signed, entered and filed May 23d, '79. A. Mandell, cl'k.

The Circuit Court of the United States for the Eastern District of Michigan. In Equity.

CHARLES H. PALMER, Complainant,

*vs.*

ELISHA T. LORING and CHARLES A. WELCH, Defendants.

And now come the said defendants, by C. I. Walker, their solicitor, and move the court to set aside the decree heretofore made in this cause for an accounting, and also for an order of the court

authorizing the taking of further and newly-discovered testimony bearing upon the merits of this case. This motion is founded upon the affidavits of Elisha T. Loring and Horatio Bigelow, herewith filed and upon the records and files of this cause.

December 16th, 1879. C. I. WALKER,
*Deft's Solicitor.*

Endorsed: No. 1982. U. S. circuit court for the eastern D. of Mich. Charles H. Palmer and Elisha T. Loring, *et al.* Equity. Motion to set aside decree for accounting and for order granting leave to take newly-discovered testimony, filed December 16th, 1879. Jno. Graves, dep'y cl'k.

189 And afterwards, to wit, on the 16th day of December, A. D. 1879, the affidavits of Elisha T. Loring and Horatio Bigelow were filed in the office of the clerk of this court, which affidavits were in the words and figures following, to wit:

*Affidavits of Elisha T. Loring and Horatio Bigelow.*

CHARLES H. PALMER, Complainant,
*vs.*
ELISHA T. LORING AND CHARLES A. WELCH, Defendants.
} In Equity.

COMMONWEALTH OF MASSACHUSETTS,
*County of Suffolk,* } *ss:*

I, Elisha T. Loring, being duly sworn, do depose and say, that I am the defendant in the above-entitled cause, and about the age of seventy-five years; that I was surprised at the testimony introduced by the complainant, Charles H. Palmer, by which he attempted to show that it was *originally* understood that he was to have one-third of what is called the Mason purchase, set up in the bill in this cause.

I have recently ascertained that Horatio Bigelow, of Boston, in the Commonwealth of Massachusetts, who for many years was intimately associated in business operations with Charles H. Palmer, and especially in matters connected with mining interests in Lake Superior; had heard said Palmer distinctly admit that his interest in said purchase was only one-fourth thereof; said Bigelow was then about to leave this country for a trip to Europe, to be gone some year and a half. Your petitioner, under advice of counsel, caused the affidavit of said Bigelow as to said admissions to be made in said cause, which affidavit is hereunto annexed. This deponent believes that the testimony of said Bigelow can be taken under commission within three or four months.

That until said disclosure by said Bigelow this deponent had no reason to know or believe that said Palmer had made any such admission to said Bigelow.

It appears by the testimony already taken in said cause that said Palmer was only entitled to the same interest in said purchase as

William B. Frue was entitled to, and said Frue applied to this deponent, through said Palmer, for a declaration of trust for one-fourth of said purchase, which was all that he then claimed.

190 This deponent was surprised at the testimony of said Frue claiming that he was entitled to one-third of said purchase, and giving as a reason why he accepted a deed of one-quarter, that he was afraid if he did not take that he would not get any.

The final arrangement between said Frue and this deponent in relation to said quarter was made in Lake Superior in the spring of 1869. The papers were drawn by Daniel H. Ball, who then had an office at Houghton, in the State of Michigan; that on learning of the testimony of said Frue, this deponent informed his counsel that papers were so drawn by said Ball, and requested him to correspond with said Ball and ascertain what he remembered about the matter, but he ascertained from his counsel that the recollection of said Ball was very indistinct upon the subject, and for that reason he did not take his testimony; but since the making of the decree in this cause he has corresponded with said Ball—has sent him a copy of the original agreement made between said Frue and this deponent—and said Ball informs him that he has refreshed his memory in relation to the matter, and that he can now testify that said contract with said Frue was not forced upon said Frue, nor entered entered into with any reluctance upon his part; and this deponent believes that said Frue's testimony in this respect is uncandid and untruthful, and believes he can show this to be the case by the testimony of said Ball.

This deponent further says that he has very little knowledge of book-keeping, except in its most simple form; that he had no book-keeper previous to the first of January, 1868, and that the transactions between Mr. Palmer and himself, in relation to which the accounting is taking place, very largely occurred previous to that time; that all his books of account previous to that time, imperfect as they were, were destroyed in the great fire in Boston some years since; that when called upon to make up an account to present before the master in this cause, he made it up from such material as he had, and which he believed at the time to be correct; but upon giving his testimony before the master in this cause, and especially upon being cross-examined by the counsel for the complainant, it became very evident that he had made several mistakes in making out said account, and that there were mistakes on both sides of said account, both as to the debtor and creditor sides; and he asks that he may file a new statement of account, corrected by the exhibits that were shown him upon his examination and by the examination that he has since made. This corrected account will show a much smaller balance due from Mr. Palmer than the original account filed; but this deponent is anxious that the account should be accurate and true.

ELISHA T. LORING.

191 UNITED STATES OF AMERICA, }
*Massachusetts District,* } *ss:*

NOVEMBER 4*th*, A. D. 1879.

Subscribed and sworn to before me—
[SEAL.] WM. S. DEXTER,
*Commissioner of U. S. Circuit Court for said District.*

The Circuit Court of the United States, for the Eastern District of Michigan. In Equity.

CHARLES H. PALMER, Complainant,
*vs.*
ELISHA T. LORING, *et al.*

*Affidavit of Horatio Bigelow.*

I, Horatio Bigelow, of Boston, in the county of Suffolk, and commonwealth of Massachusetts, counsellor at law on oath declare and say, that I met Charles H. Palmer, of Pontiac, in the State of Michigan, at the Douglas house, in Houghton, some ten or twelve years ago. I cannot fix the exact date of the meeting. He, then and there, told me he had purchased of Thomas F. Mason, one hundred and twenty acres of land in section twenty-three (23,) adjoining the Calumet mine, and expressed a wish that I would take one fourth of the purchase, which would give me the same interest which he and Mr. William B. Frue had. He told me that the title or control of the property was in Mr. Elisha T. Loring, that he had no doubt Mr. Loring would be willing I should have a quarter interest in the purchase. Soon after this interview, with said Palmer, said Loring arrived at Houghton, State of Michigan, and said Palmer informed me that he had seen said Loring, and had urged him to let me have the one-fourth interest in the property, but he, —the said Loring—absolutely declined to do so, the matter was thereupon dropped.

HORATIO BIGELOW.

UNITED STATES OF AMERICA, }
*Massachusetts District,* } *ss:*

OCTOBER 11*th*, A. D. 1870.

Subscribed and sworn to before me—
[SEAL.] WM. S. DEXTER,
*Commissioner of U. S. Circuit Court for said District.*

Endorsed: No. 1982. U. S. circuit court for eastern dist. of Mich. In equity. Charles H. Palmer, compl't, *vs.* Elisha T. Loring, *et. al.*, def't's. Affidavits of Elisha T. Loring and Horatio Bigelow, in support of motion to set aside decree, etc. Filed December 16th, 1879. Jno Graves, dep'y cl'k.

192 And afterwards to wit, on the 11th day of March, A. D. 1880, a certain affidavit of Charles H. Palmer, was filed in

the office of the clerk of this court, which affidavit was in the words and figures following, to wit:

*Affidavit of Charles H. Palmer.*

In the Circuit Court of the United States for the Eastern District of Michigan. In Equity.

CHARLES A. PALMER, Complainant,
*vs.*
ELISHA T. LORING and CHARLES A. WELCH, Defendants.

STATE OF MICHIGAN, } *ss:*
*County of Wayne,* }

Charles H. Palmer, of Pontiac, Michigan, being duly sworn, deposes and says, that he has heard read the affidavit of Horatio Bigelow, filed in said cause, to obtain an opening of the decree therein, and that as to what is stated in said affidavit he says:

1. That he did have a conversation with said Bigelow just after said purchase, upon the subject-matter mentioned.

2. That said Bigelow is mistaken in his version of said conversation.

3. That the proposition to purchase a fourth interest came from said Bigelow, and not from this deponent.

4. That said Bigelow wished to join us in the purchase, and deponent told him he could not promise him, but was willing to let him in if the others were. That deponent cannot remember the exact language used, but the proposition was in substance and effect to let him come in as a fourth equal joint owner.

5. That deponent consulted Frue about it, and afterwards Loring, on meeting him, and both opposed it, and Loring especially; and deponent subsequently so informed Bigelow.

6. That if Mr. Bigelow got the impression from the conversation that deponent only claimed a quarter interest in the original purchase, he must have misapprehended or misunderstood deponent, for no such idea ever at any time entered deponent's head, and he never designed to convey any such meaning. Further deponent saith not.

CHARLES H. PALMER.

Subscribed and sworn to before me this eleventh day of March, A. D. 1880.

[SEAL.] CHARLES M. WILKINSON,
*Notary Public for the County of Wayne, Michigan.*

Endorsed: 1982. United States circuit court for the eastern district of Michigan. In equity. Charles H. Palmer, compl't, *vs.* Elisha T. Loring and Charles A. Welch, deft's. Affidavit of Charles H. Palmer filed March 11, 1880. A. Mandell, clerk.

193 And afterwards, to wit, and now on this day, that is to say,

at a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment at the district court room in the city of Detroit, on Thursday, the eleventh day of March, in the year one thousand eight hundred and eighty.

Present: The Honorable Henry B. Brown, district judge.

CHARLES H. PALMER, Complainant.
*vs.*
ELISHA T. LORING and CHARLES A. WELCH, Defendants. } In Equity.

The motion of defendant to set aside decree and to take further testimony now coming on to be heard, is argued by Mr. C. I. Walker, in support of said motion, and by Mr. Hoyt Post and S. F. Seager in opposition thereto, and submitted for decision.

194 And afterwads, to wit, and now on this day, that is to say, at a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment, at the district court room, in the city of Detroit, on Monday, the fifteenth day of March, in the year one thousand eight hundred and eighty.

Present: The honorable Henry B. Brown, district judge.

CHARLES H. PALMER, Complainant,
*vs.*
ELISHA T. LORING and CHARLES A. WELCH, Defendants. } In Equity.

The motion of defendants to set aside decree, and to take further testimony in this cause having been heretofore argued and submitted, and the same having been duly considered, is now by the court here denied.

195, 196, 197, 198, 199 The Circuit Court of the United States for the Eastern District of Michigan. In Equity.

CHARLES H. PALMER, Complainant,
*vs.*
ELISHA T. LORING and CHARLES A. WELCH, Defendants.

*Vol. I.—Record on the Accounting.*

ASHLEY POND,
SCHUYLER F. SEAGER,
HOYT POST,
*Solicitors for Complainant.*

CHARLES I. WALKER,
*Solicitor for Defendants.*

200 The Circuit Court of the United States for the Eastern District of Michigan. In Equity.

CHARLES H. PALMER, Complainant,
*vs.*
ELISHA T. LORING and CHARLES A. WELCH, Defendants.

The following are the accounts filed by the parties with commissioner under the order of the court, somewhat varied in mere form for the convenience of the printer.

*Claimant's Account.*

The Circuit Court of the United States for the Eastern District of Michigan. In Equity.

CHARLES H. PALMER, Complainant,
*vs.*
ELISHA T. LORING and CHARLES A. WELCH, Defendants.

STATE OF MICHIGAN, } *ss:*
*County of Wayne,* }

Charles H. Palmer, being duly sworn, says that the annexed statement of account, marked Exhibit A, is, he believes, a true and correct statement of all the amounts properly chargeable to
201 him, and of the credits to which he is entitled on the business transactions between E. T. Loring and himself, from and including the year 1865 to the present date.

There had been prior transactions, all of which had been settled and adjusted, except as to Franklin stock, of which 860 shares belonging to this deponent were remaining in Loring's hands, or had been disposed of by him, but unaccounted for, as shown by Exhibit B, hereto attached.

And this deponent further says that he kept no books of account during the period covered by Exhibit A, but that Loring from time to time furnished statements of account, which this deponent still has, and from which, except as hereinafter stated, said Exhibit A is prepared.

And this deponent further says that said Exhibit A contains all the items both of debit and credit included in said statements, except the following:

1*st. The Weed File Stock.*

In relation to this there are three charges:

| | |
|---|---|
| 1866. September 4, note paid Bird | $5,000 00 |
| 1868. May 1, assessment on stock | 211 47 |
| June 13, assessment on stock | 211 47 |
| Total | $5,422 94 |

These charges are omitted, as deponent expects to show they are unauthorized.

*2d. Adams Stock.*

There are here also three charges for assessment on 1,420 shares of stock. This deponent only owned 1,000 shares, and has charged himself with assessments on that amount:

| | | | | | |
|---|---|---|---|---|---|
| 1867. | September 19, | charged by Loring | $2,912 90. | Allowed at | $2,051 34 |
| | December 10, | " " | 4,315 50. | " | 3,039 69 |
| 1869. | March 31, | " " | 1,463 81. | " | 1,030 85 |

*3d. Torch Lake.*

Deponent is credited by Loring with three (3) sales, viz:

| | | |
|---|---|---|
| 1868. | March 11 | $643 17 |
| | April 1 | 3,195 00 |
| | April 20 | 1,619 29 |
| | Total | $5,457 46 |

202 He owned no Torch Lake stock, and is not, therefore, entitled to this credit, and omits it from the statement.

*4th. Ossipee Stock.*

He is charged:

| | | |
|---|---|---|
| 1868, | August 28, Assessment | $843 64 |
| | November 7, " | 1,800 00 |
| | Total | $2,643 64 |

And is credited:

1868, August 20, with proceeds of sale 509 shares $2,641 42

The stock did not belong to deponent, and is therefore omitted.

*5th. Discounts and Interest.*

During the time covered by this account, deponent frequently gave to Loring notes to be by him discounted as he might wish to use them. These discounts were for the benefit of deponent so far as there were any balances against him, but beyond that were accommodation paper. All entries in the statements furnished by Loring in reference to these notes, as well as in reference to the interest on balances, are omitted in Exhibit *A*. Deponent should, however, be charged with interest when balances were against him, and allowed interest when they were in his favor, at such rate as may be equitable.

With the exceptions noted, Exhibit *A* is a complete transcript of the statements furnished by Loring, but contains also the following additions:

1st. Under date of July 25th, 1868, is an item of $610.32, for which deponent has no credit on the account furnished by Loring.

2d. Under dates March 23d, April 3d, and September 1st deponent has taken credit for the profits on four stock sales made by him, the entire proceeds of which were paid to Loring.

3d. Under dates of January 7th and 9th, 1867, this deponent paid to Loring $10,000; $6,255 was on account of Wm. B. Frue,
203 and the balance, $3,745, he credits to himself.

4th. Under date of December 28th, 1866, he received from Loring $3,000, which is, therefore, credited to him.

The items embraced in the last three paragraphs are all included in an account kept by Mr. Loring, known as the land account, which was an omnibus account, in which many persons besides Loring and this deponent were interested.

Deponent has taken from this account all the items that he believes properly belong to him.

5th. Under date of June 18th, and December 18th, 1868, and February 18th, 1869, deponent has charged himself with the cost of his one-third interest in lands on Sec. 23, to secure which this suit was brought.

Deponent claims that Loring should account for the stocks, either converted, or wrongfully withheld, at the highest market rate they have since borne, with interest from that date.

Subscribed and sworn to before me this 7th day of July, A. D. 1879.

## EXHIBIT A.

ELISHA T. LORING, IN ACCOUNT WITH CHARLES H. PALMER.

| | | | Dr. | | |
|---|---|---|---|---|---|
| 1865. | | | | | |
| Sept. | 12. | To proceeds 500 shares stock sold J. H. Cotton | $3,000 00 | No. | 1 |
| | 20. | " 200 " C. D. Head | 1,100 00 | " | 2 |
| Oct. | 4. | " 500 " A. A. F | 3,000 00 | " | 3 |
| | | " 11 " E. T. L | 66 00 | " | 4 |
| 1866. | | | | | |
| Jany. | 12. | Cash of Head & Perkins | 82 23 | " | 5 |
| Feby. | 26. | " on Land Warrants | 230 00 | " | 6 |
| March | 30. | " | 100 00 | " | 7 |
| May | 2. | Proceeds 250 shares S. P. Stock | 1,758 75 | " | 8 |
| | 28. | " 500 " Adams " | 2,917 20 | " | 9 |
| Sept. | 4. | " 1,000 " | 6,000 00 | " | 10 |
| | 27. | ½ Ross bill, extinguishing title | 30 00 | " | 11 |
| 1867. | | | | | |
| Jany. | 7 & 9. | cash, being { 7th $6,000 / 9th $4,000 } $10,000 less $6,255, belonging to Wm. B. Frue | 3,745 00 | " | 12 |
| 204 | | | | | |
| March | 23. | profits on sales of stock made by Palmer to Peleg Hall, proceeds paid to Loring | 951 80 | " | 13 |
| April | 3. | profits on sale of stock sold to J. H. Cotton | 1,166 67 | " | 14 |
| | | 2/10 profits on sales of stock sold to Sibley & Douglass | 1,550 00 | " | 15 |
| May | 21. | cash of Ossipee Mining Co., for services | 2,500 00 | " | 16 |
| Sept. | 1. | profits on sales of stock made by Palmer to S. Mandlebaum, proceeds paid to Loring | 1,000 00 | " | 17 |
| 1868. | | | | | |
| July | 1. | dividends D. & L. S. stock | 1,687 50 | " | 18 |
| | 25. | cash per C. H. P., Jr., | 610 32 | " | 19 |
| Nov. | 7. | " paid Treasurer Kearsage M'g Co | 3,000 00 | " | 20 |

| | | | | |
|---|---|---|---|---|
| 1868. | | | | |
| Dec. | 21. | cash paid Kingsbury, Smelting Stock | $5,000 00 | No. 21 |
| | 28. | " " " " " | 10,000 00 | " 22 |
| 1869. | | | | |
| March | 20. | " " on sale Hecla stock | 8,000 00 | " 23 |
| | | | 57,495 47 | |

CONTRA. Cr.

| | | |
|---|---|---|
| 1865. | | |
| October 3, by amount remitted to R. H. Rickard | 1,500 00 | No. 1 |
| October 24, by amount paid E. D. Brigham, S. W. H | 2,420 00 | " 2 |
| October 27, by amount draft favor of S. H. Sanford | 2,000 00 | " 3 |
| November 14, by amount draft favor of W. B. Frue | 450 00 | " 4 |
| November 28, by amount draft favor of W. B. Frue | 600 00 | " 5 |
| 1866. | | |
| January 12, by amount transferred to W. B. Frue | 2,535 75 | " 6 |
| March 9, by amount draft favor of J. N. & Co. $150, cash $100 | 250 00 | " 7 |
| March 18, by amount paid Tilton on Palmer's account | 3,600 00 | " 8 |
| August 13, by amount draft favor of N. B. H | 200 00 | " 9 |
| September 1, by amount draft favor of J. B. Ross | 150 00 | " 10 |
| September 27, by cash | 100 00 | " 11 |
| November 1, by assessment on 250 shares S. P. stock | 750 00 | " 12 |
| November 1, by cash paid for 100 shares Hecla | 6,000 00 | " 13 |
| December 28, by cash | 3,000 00 | " 14 |
| 1867. | | |
| February 19, by cash $225; 21st, $100; 25th, $700 | 1,025 00 | " 15 |
| March 4, by cash $200; 21st, $140 | 340 00 | " 16 |
| April 1, by assessment on 100 shares Hecla stock | 300 00 | " 17 |
| April 3, by cash paid smelting works | 1,086 40 | " 18 |
| May 7, by cash $50; 17th, $22 | 72 00 | " 19 |
| May 20, by cash | 150 00 | " 20 |
| June 25, by draft favor of Chassel, $100; 29th, $100 | 200 00 | " 21 |
| July 15, by assessment 100 shares Hecla | 500 00 | " 22 |

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| | | |
|---|---|---|
| August 6th, by assessment 250 shares S. P. and interest | 1,259 79 | " 23 |
| August 27, by draft favor of Palmer | 200 00 | " 24 |
| September 19, by assessment on 1,000 shares Adams stock | 2,051 34 | " 25 |
| November 8, by assessment on 250 shares S. P. stock | 757 88 | " 26 |
| November 18, by assessment on 250 shares S. P. stock | 1,000 00 | " 27 |
| November 20, by draft favor of Mrs. P., $300; 27th, $100 | 400 00 | " 28 |
| November 21, by assessment on 100 shares Hecla | 1,005 00 | " 29 |
| December 10, by draft favor of Mrs. P | 300 00 | " 30 |
| December 17, by assessment on 1000 shares Adams stock | 3,039 69 | " 31 |
| 1868. | | |
| January 4, by cash paid for stamps | 2 50 | " 32 |
| January 21, by assessment on Hecla stock | 400 00 | " 33 |
| February 17, by cash | 100 00 | " 34 |
| February 26, by draft favor of A. H. Sibley | 250 00 | " 35 |
| February 29, by Sohier & Welch, legal services | 6 00 | " 36 |
| April 15, by stock D. & L. S. Copper Company | 2,925 00 | " 37 |
| April 18, by draft favor of Revere House | 171 61 | " 38 |
| May 4, by draft favor of Revere House | 200 00 | " 39 |
| June 18, by ¼ cash payment, on Sec. 23 | 1,666 67 | " 40 |
| September 28, by cash paid assessment 250 shares S. P. and interest. | 756 28 | " 41 |
| November 20, by draft favor of S. Mandlebaum | 1,200 00 | " 42 |
| December 18, by ⅓ second payment on Sec. 23 and interest | 2,587 50 | " 43 |

| | | | |
|---|---|---|---|
| 1869. | | | |
| February 18, by ⅓ third payment on Sec. 23 and interest | $2,616 67 | No. | 44 |
| March 20, by expenses on sale Hecla stock | 25 80 | " | 45 |
| March 31, by assessment 1,000 shares Adams stock | 1,030 85 | " | 46 |
| March 31, by assessment 250 shares S. P. stock | 1,271 87 | " | 47 |
| Balance carried forward | 5,041 87 | " | 48 |
| | $57,495 47 | | |
| To balance brought down | $504 87 | | |
| To be added: | | | |
| To interest on above balance to date. | | No. | 24 |
| " the value of 860 shares Franklin stock. | | " | 25 |
| " the value of 250 shares South Pewabic stock. | | " | 26 |
| " the value of 1,000 shares Adams stock. | | " | 27 |

## EXHIBIT B.

### FRANKLIN STOCK ACCOUNT.

ELISHA T. LORING IN ACCOUNT WITH CHAS. H. PALMER.

| | | | | |
|---|---|---|---|---|
| 1858. | | No. Shares. | | |
| Sept. 8. | To shares of stock in Franklin Mining Co | 4,400 | No. | 1 |
| Dec. | " certificate No. 8 | 500 | " | 2 |
| | " " 43 | 250 | " | 3 |
| | | 5,150 | | |

206 CONTRA.

| | | | |
|---|---|---|---|
| 1859. | | | |
| March, by exchange for 200 shares, Pewabic stock | 400 | No. | 1 |
| by sold by Palmer to E. W. Giddings | 17 | " | 2 |
| August, by sale reported made by Head & Perkins | 43 | " | 8 |
| 1860. | | | |
| April 26, by sale reported made by Head & Perkins | 154 | " | 4 |
| by exchange for 250 shares Pewabic stock | 500 | " | 5 |
| June 15, by exchange for 1,000 shares Huron stock | 200 | " | 6 |
| September 20, by sale reported by Loring | 20 | " | 7 |
| 1861. | | | |
| March 5, by sale reported by Loring | 40 | " | 8 |
| March 28, by sale reported by Loring | 16 | " | 9 |
| April 1, by sale reported by Loring | 200 | " | 10 |
| 1862. | | | |
| January 10, by sale reported by Loring, made by H. & P | 100 | " | 11 |
| January 14, by sale reported by Loring, made by H. & P | 200 | " | 12 |
| February 20, by sale reported by Loring, made by H. & P | 100 | " | 13 |
| March, by sale reported by Loring, made by H. & P | 200 | " | 14 |
| March 29, by sale reported by Loring, made by H. & P | 15 | " | 15 |
| April 2, by sale reported by Loring, made by B. B | 50 | " | 16 |
| April 8, by sale reported by Loring, made by B. B | 50 | " | 17 |
| April 11, by sale reported by Loring, made by B. B | 50 | " | 18 |
| April 16, by sale reported by Loring, made by H. & P | 100 | " | 19 |
| April 23, by sale reported by Loring, made by H. & P | 100 | " | 20 |
| April 25, by sale reported by Loring, made by H. & P | 100 | " | 21 |
| April 26, by sale reported by Loring, made by H. & P | 100 | " | 22 |
| April 28, by sale reported by Loring, made by B. B | 100 | " | 26 |
| May 1, by sale reported by Loring, made by H. & P | 200 | " | 23 |
| May 6, by sale reported by Loring, made by H. & P | 100 | " | 24 |
| May 13, by shares returned to Palmer | 1,135 | " | 25 |
| Balance unaccounted for, carried forward | 860 | " | 27 |
| | 5,150 | | |

To number of shares Franklin stock unaccounted, for 860.

207 *Defendant's Accounts.*

CHAS. H. PALMER in Account with ELISHA T. LORING.

| | | | | | |
|---|---|---|---|---|---|
| **1865.** | | | | | |
| Oct. 3, | To amount remitted to R. H. Richard per order | $1,500 00 | No. | 1 |
| Oct. 24, | " paid E. D. Brigham, S. W. Stock | 2,420 00 | " | 2 |
| Oct. 27, | " draft favor of G. H. Sanford | 2,000 00 | " | 3 |
| Nov. 14, | " W. B. F., favor of John Senter | 450 00 | " | 4 |
| Nov. 28, | " W. B. F., favor of John Senter | 600 00 | " | 5 |
| **1866.** | | | | |
| Jany. 12, | " transferred to account of W. B. Frue | 2,535 75 | " | 6 |
| Mar. 9, | " draft favor of J. N. & Co., $150 cash $100 | 250 00 | " | 7 |
| May 18, | " paid his note | 2,500 00 | " | 8 |
| May 18, | " Tilton on his account | 3,600 00 | " | 9 |
| Aug. 13, | " draft favor of N. B. H. | 200 00 | " | 10 |
| Sept. 1, | " draft favor of J. B. Ross | 150 00 | " | 11 |
| Sept. 4, | " note paid L. Bird | 5,000 00 | " | 12 |
| Sept. 27, | " cash | 100 00 | " | 13 |
| Nov. 1, | " assessment on 250 shares South Pewabic stock. | 750 00 | " | 14 |
| Nov. 1, | " paid 100 shares Hecla stock (cash Oct. 17) | 6,000 00 | " | 15 |
| Nov. 3, | " expenses to Pittsburgh | 50 00 | " | 16 |
| Nov. 17, | " sundry telegrams | 26 97 | " | 17 |
| Nov. 17, | " his note at bank | 2,500 00 | " | 18 |
| Dec. 28, | " expenses collecting draft on Chicago | 3 03 | " | 19 |
| Dec. 31, | " sundry telegrams to date | 26 23 | " | 20 |
| Dec. 31, | " expenses express and copying deed | 6 65 | " | 21 |
| **1867.** | | | | |
| Jany. 12, | " expenses on specimens | 4 25 | " | 22 |
| Jany. 12, | " expenses telegraphing | 8 91 | " | 23 |
| Jany. 25, | " expenses telegraphing at sundry times | 16 08 | " | 24 |
| Feb. 1, | To balance of interest to date | 21 36 | " | 25 |
| Feb. 1, | To 2,595 shares Ossipee stock allotted at 4.83⅓ | 12,542 50 | " | 26 |
| Feb. 1, | To 200 shares Ossipee stock certificate sent at 4.83⅓ | 966 67 | " | 27 |
| Feb. 1, | To 1,875 shares Kearsage allotted at 2.66⅔ | 5,000 00 | " | 28 |
| Feb. 1, | To 2,500 shares Iroquois allotted at .50 | 1,250 00 | " | 29 |
| Feb. 1, | To 1,000 shares Torch Lake allotted at 1.50 | 1,500 00 | " | 30 |
| Feb. 1, | To 3,500 shares section 35 and 36 allotted at 1.25 | 4,375 00 | " | 31 |
| Feb. 19, | To cash $225, 21st cash $100, 25th cash $700 | 1,025 00 | " | 32 |
| Mar. 4, | To cash $200, 21st cash $140 | 340 00 | " | 33 |
| Mar. 7, | To paid telegraphing | 8 04 | " | 34 |
| Mar. 23, | To cash paid H. Bigelow to balance account with C. H. P. | 96 99 | " | 35 |
| Apr. 1, | To cash paid assessment on 100 shares Hecla stock | 300 00 | " | 36 |
| Apr. 3, | " account Smelting Works stock | 1,086 40 | " | 37 |
| Apr. 22, | " on sundry telegrams | 16 10 | " | 38 |
| 208 | | | | |
| May 7, | " $50.00, 17th cash $22.00 | 72 00 | " | 39 |
| May 20, | " | 150 00 | " | 40 |
| June 25, | " draft favor J. Chassel $100, 29th cash $100 | 200 00 | " | 41 |
| July 15, | " assessment on 100 shares Hecla stock | 500 00 | " | 42 |
| Aug. 6, | " " 250 shares South Pewabic stock, with interest | 1,259 79 | " | 43 |
| Aug. 9, | " renewal of notes at bank | 350 00 | " | 44 |
| Aug. 27, | " draft in his favor | 200 00 | " | 45 |
| Sept. 19, | " assessment on 1,420 shares Adams stock | 2,912 90 | " | 46 |
| Nov. 8, | " " 250 shares South Pewabic stock | 757 88 | " | 47 |
| Nov. 18, | " " 250 shares South Pewabic stock | 1,000 00 | " | 48 |
| Nov. 20, | " draft favor of Mrs. Palmer | 300 00 | " | 49 |
| Nov. 21, | " assessment on 100 shares Hecla stock | 1,005 00 | " | 50 |
| Nov. 27, | " draft favor of Mrs. Palmer | 100 00 | " | 51 |

| | | | | | |
|---|---|---|---|---|---|
| 1867. | | | | | |
| Dec. 10, | To cash draft favor of Mrs. Palmer | $300 | 00 | No. | 52 |
| Dec. 17, | " assessment 1,420 shares Adams stock | 4,315 | 50 | " | 53 |
| Dec. 31, | To balance interest account | 1,549 | 74 | " | 54 |
| 1868. | | | | | |
| Jany. 4, | To cash paid for stamps | 2 | 50 | " | 55 |
| Jany. 21, | " assessment on Hecla stock | 400 | 00 | " | 56 |
| Feb. 11, | " renewing note at bank | 405 | 00 | " | 57 |
| Feb. 17, | " C. H. P | 100 | 00 | " | 58 |
| Feb. 26, | " draft favor A. H. Sibley | 250 | 00 | " | 59 |
| Feb. 29, | " renewal of note | 180 | 42 | " | 60 |
| Feb. 29, | " S. & W. for legal services | 6 | 00 | " | 61 |
| Mar. 7, | " renewal of note and stamp | 205 | 83 | " | 62 |
| Mar. 19, | " his note | 5,000 | 00 | " | 63 |
| April 15, | " stock D. & L. S. Copper Co. | 2,925 | 00 | " | 64 |
| April 18, | " draft favor of Revere House | 171 | 61 | " | 65 |
| April 18, | " his note | 5,000 | 00 | " | 66 |
| April 25, | " " | 5,000 | 00 | " | 67 |
| May 1, | " Weed File Co. | 211 | 47 | " | 68 |
| May 4, | " draft favor of Revere House | 200 | 00 | " | 69 |
| June 13, | " Weed File Co. | 211 | 47 | " | 70 |
| Aug. 14, | " his note | 5,000 | 00 | " | 71 |
| Aug. 14, | " " | 5,000 | 00 | " | 72 |
| Aug. 22, | " " | 5,000 | 00 | " | 73 |
| Aug. 27, | " " | 5,000 | 00 | " | 74 |
| Aug. 31, | " " | 5,000 | 00 | " | 75 |
| Sept. 1, | " " | 5,000 | 00 | " | 76 |
| Sept. 12, | " " | 5,000 | 00 | " | 77 |
| Sept. 28, | " assessment 250 shares South Pewabic | 756 | 28 | " | 78 |
| Dec. 16, | " his note | 5,000 | 00 | " | 79 |
| Dec. 19, | " his note | 5,000 | 00 | " | 80 |
| Dec. 31, | To balance interest account | 1,101 | 36 | " | 81 |
| 1869. | | | | | |
| Jany. 6, | To cash paid his note at bank | 5,000 | 00 | " | 82 |
| 209 | | | | | |
| Jany. 15, | " his note at bank | 5,000 | 00 | " | 83 |
| Feb. 17, | " renewing his note | 200 | 00 | " | 84 |
| Feb. 20, | " his note at bank | 5,000 | 00 | " | 85 |
| Mar. 3, | " his note at bank | 5,000 | 00 | " | 86 |
| Mar. 20, | " for sale of Hecla stock | 25 | 80 | " | 87 |
| Mar. 31, | " assessment Adams stock (cash Nov. 10. 1868.) | 1,424 | 14 | " | 88 |
| Aug. 13, | " his note | 5,000 | 00 | " | 89 |
| Aug. 28, | " his note | 5,000 | 00 | " | 90 |
| Dec. 31, | To balance interest account | 1,551 | 09 | " | 91 |
| 1872. | | | | | |
| Mar. 15, | To interest on $25,085.85 from Dec. 31, 1869 to date 2 years, 2 mos. and 14 days, at 7 per cent. | 3,872 | 97 | " | 92 |
| April 20, | To cash paid assessment on 1,000 shs. Torch Lake | 750 | 00 | " | 93 |
| 1879. | | | | | |
| April 15, | To cash paid assessment on 1,000 shs. Torch Lake | 200 | 00 | " | 94 |
| June 1, | To balance interest account | 7,304 | 46 | " | 95 |
| 1867 | *Stocks bought by C. H. P. on account of W. B. Frue.* | | | | |
| Feb. 1, | To 2,600 shares Torch Lake stock, at $1.50 | 3,900 | 00 | " | 96 |
| | To 3,000 shares Sec. 35 and 36 (his interest) at $1.25 | 3,750 | 00 | " | 97 |
| 1872. | | | | | |
| April 20, | To cash p'd assessm't on 2,600 shs. Torch Lake, at .75 | 1,950 | 00 | " | 98 |

| | | | | | |
|---|---|---|---|---|---|
| 1879. | | | | | |
| April 15, | To cash p'd assessm't on 2,600 shs. Torch Lake, at .20 | | $520 | 00 | No. 99 |
| June 1, | To interest on $7,650 from Feb. 1, 1867, to date, 12 years, 4 mos., at 7 per cent | | 6,604 | 50 | " 100 |
| | To interest on $1,950 from April 20, 1872, to date 7 years, 1 month, 11 days, at 7 per cent | | 971 | 04 | " 101 |
| | To interest on $520 from April 15, 1879, to date, 1 month and 15 days | | 4 | 55 | " 102 |
| 1868. | *Expended in purchase of Land on Sec. 23, etc.* | | | | |
| June 18, | To cash paid Thos. F. Mason for land | 20,000 | 00 | | " 103 |
| " | " taxes from 1869 to 1878 inclusive | 750 | 25 | | " 104 |
| " | " Goodell and others for care of property | 396 | 52 | | " 105 |
| " | " Dan'l H. Ball for stamps | 15 | 00 | | " 106 |
| 1879. | | | | | |
| July 1, | To interest on cost of land from June 18, 1868, to date, at 7 per cent | 15,450 | 55 | | " 107 |
| | To interest on expenditures, made up semi-ann'lly | 421 | 75 | | " 108 |
| | To commission on expenditures, made up semi-ann'lly, at 5 per cent | 58 | 09 | | " 109 |
| Total indebtedness to June 1, 1879, including interest on land account, Section 23, made up to July 1, 1879 | | 51,916 | 64 | | |

## *Credit.*

| | | | | | |
|---|---|---|---|---|---|
| 1865. | | | | | |
| Sept. 12, | By am't rec'd of J. H. Cotton 500 shs. Adams st'k | 3,000 | 00 | " | 1 |
| Sept. 20, | By am't rec'd of C. D. Head and T. H. Perkins, 200 shares Adams stock | 1,100 | 00 | " | 2 |

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| | | | | | |
|---|---|---|---|---|---|
| Oct. 4, | " | of A. A. Frazer, 500 shs. S. Pewabic | 3,000 | 00 | " 3 |
| Oct. 4, | " | of E. T. L., 11 shares South Pewabic | 66 | 00 | " 4 |
| Nov. 20, | " | his note discounted at bank | 2,387 | 50 | " 5 |
| 1866. | | | | | |
| Jan. 12, | " | C. D. Head and T. H. Perkins | 82 | 23 | " 6 |
| Feb. 26, | " | for land warrants | 230 | 00 | " 7 |
| Mar. 30, | " | cash | 100 | 00 | " 8 |
| May 2, | " | for 250 shares So. Pewabic stock | 1,758 | 75 | " 9 |
| May 18, | " | his note discounted at bank | 2,407 | 50 | " 10 |
| May 28, | " | —m. Cobb for 500 shs. Adams stock | 2,917 | 20 | " 11 |
| Sept. 4, | " | 1,000 shares Adams stock | 6,000 | 00 | " 12 |
| Sept. 27, | " | ½ J. B. Ross' bill exting'ng titles | 30 | 00 | " 13 |
| 1867. | | | | | |
| Feb. 15, | By net am't his note discounted at bank | 4,807 | 50 | " | 14 |
| Feb. 25, | By net am't his note discounted at bank | 4,807 | 50 | " | 15 |
| Mar. 23, | By (land acc't rec'd for 500 shares Kearsarge stock, Hall & Co., at $4.50 | 2,250 | 00 | " | 16 |
| April 3, | By am't rec'd from J. H. Cotton for ditto | 2,812 | 50 | " | 17 |
| April 6, | " from Sibley & Co. for 750 shs. Kearsarge stock, at $4.50 | 3,375 | 00 | " | 18 |
| May 21, | " from Ossipee Co. for services rendered | 2,500 | 00 | " | 19 |
| Nov. 8, | " from note at bank (4 mos.) | 4,864 | 17 | " | 20 |
| Nov. 12, | " " " | 4,877 | 92 | " | 21 |
| Nov. 18, | " " " | 4,846 | 26 | " | 22 |
| Dec. 16, | " " " | 4,877 | 92 | " | 23 |
| 1868. | | | | | |
| Jan. 4, | " " " | 4,845 | 84 | " | 24 |
| Mar. 11, | " from H. Bigelow acc't of stock | 643 | 17 | " | 25 |

| | | | |
|---|---|---|---|
| 1868. | | | |
| April 13, | By am't rec'd net amount of note less stamp | $4,846 26 | No. 26 |
| April 23, | " net amount of note less stamp | 4,847 50 | " 27 |
| April 28, | " net amount of note less stamp | 4,843 75 | " 28 |
| July 1, | By am't dividend D. & L. S. Copper Co. 1,125 shs | 1,687 50 | " 29 |
| Aug. 14, | By net amount of note | 4,877 92 | " 30 |
| Aug. 17, | " " | 4,860 83 | " 31 |
| Aug. 18, | " " | 4,794 17 | " 32 |
| Aug. 27, | " " | 4,794 17 | " 33 |
| Aug. 31, | " " | 4,795 28 | " 34 |
| Sept. 3, | " " | 4,860 83 | " 35 |
| Sept, 12, | " " | 4,843 75 | " 36 |
| Nov. 7, | By amount rec'd from Kearsarge Co., for land | 2,500 00 | " 37 |
| Nov. 7, | By amount paid by Kearsarge Co., his services | 500 00 | " 38 |
| Dec. 21, | By amount received from F. J. Kingsbury for C. & L. S. stock | 5,000 00 | " 39 |
| Dec. 28, | " " from F. J. Kingsbury for C. & L. S. stock | 10,000 00 | " 40 |
| 1869. | | | |
| Feb. 16, | By net amount received from his note | 4,801 94 | " 41 |
| Mar. 20, | By amount received, sale of Hecla stock | 8,000 00 | " 42 |
| 1872. | | | |
| Mar. 15, | " " sale of Ossipee stock | 12,975 00 | " 43 |
| July 16, | " " sale of 1,420 shares of Adams stock. | 2,366 67 | " 44 |
| 1878. | | | |
| Nov. 7, | By cash rec'd for taxes on undivided ¼ with interest | 57 35 | " 45 |

211 In the Circuit Court of the United States for the Eastern District of Michigan.

CHARLES H. PALMER, Complainant,
*vs.*
ELISHA T. LORING AND CHARLES A. WELCH, Defendants.

*Testimony taken at Boston, Mass., before Herschel Whitaker, special Commissioner, July 21st, 1879, at ten o'clock a. m.*

Appearances: Messrs. Seager and Post, for the complainant, Mr. C. I. Walker, for the defendants.

At the request of counsel, and for the convenience in examination of witnesses, the master numbers the respective items of the accounts filed with him.

Elisha T. Loring, sworn in his own behalf.

Examined by Mr. WALKER.

Q. I call your attention to No. 8 in your debtor account; a charge for a $2,500 note paid by you. Will you state whether that is the note? Hands a paper to the witness.

A. Yes, sir; that is the note. It bears my endorsement. The paper presented to the witness is marked by the commissioner Exhibit 1, and offered in evidence, of which the following is a copy:

212 BOSTON, *November 15th*, 1865.

Six months from date, for value received, I promise to pay E. T. Loring, or order, twenty-five hundred dollars.

$2,500. [STAMP.]

CHAS. H. PALMER.

The note bears the following endorsements on its back:

I hereby agree to waive demand and notice on the within note.

E. T. LORING.

Pay E. A. Presbrey, Esq., cashier, or order.

AMOS OTIS, *Cashier.*

Q. I next call your attention to No. 12 of the same account, in relation to note paid Bird, and also to Nos. 68 and 70, which were assessments upon the same stock, will you state briefly the transaction out of which that charge grew?

A. Yes, sir. Mr. Palmer, being in Boston at the commencement of this transaction, was introduced to Mr. Bird, who presented to him an opportunity to invest something in a company formed for the manufacture of files by machinery; Mr. Palmer went and examined his machinery, which was in Washington street, and was favorable impressed with the result of his examination, and Mr. Bird suggested to Palmer to take an interest in it, to which Mr. Palmer assented, and I myself took the same interest which Palmer did, $5,000.

Q. Will you state whether that was the contract—the paper I now present to you—which was delivered by Bird at the time?

A. Yes, sir; that was the contract made between Bird and Palmer.

Q. And state whether the stock annexed thereto, is the stock referred to?

A. Yes, sir; this is the stock.

The paper referred to is here offered in evidence, and marked Exhibit 2. The following is a copy of the contract:

213 BOSTON, *March* 1, 1866.

Received, this date, of Charles H. Palmer, his promissory note of $5,000, dated March 1st, 1866, payable in six months to the order of E. T. Loring, on the payment of which, or as soon thereafter as possible, I agree to transfer to the said Palmer, five thousand dollars of the capital stock of the Weed File Manufacturing Company, at par, fifty per cent. of the said capital stock having already been assessed and paid in. The said Palmer is to pay me interest on each and all the assessments on the remainder of the capital stock from the time they are made till the payment of the note. This interest account to be made up and paid at and with the maturity of the note, it being understood that the shares of said capital stock have not yet been issued by the company, and may not be till after the maturity of said note; but said transfer shall be made as soon there-

after as the said company shall issue its stock; provided, only said note and interest account shall be paid; it being understood that this interest account is to be merely on such part of twenty-five hundred dollars as shall be assessed thereon prior to the maturity of said note.

LEWIS J. BIRD. [SEAL.]

Witness my hand and seal in presence of—
J. W. HASTINGS.

[STAMP.]

To this contract are attached four certificates of Merrill Patent Barrel stock for 6, 15, 7, and 21 shares respectively. The one for 6 shares, dated October 29, 1868, certifying that Chas. H. Palmer is proprietor of 6 shares of Merrill Patent Barrel Company, signed by Wm. B. Merrill, treasurer, and M. Dyer, Jr., president. Another, for 15 shares, dated 22d of May, 1868, issued to the same. The one for 7 shares, issued to Elisha T. Loring, trustee, dated 29th October, 1868. The one for 21 shares, is issued to Elisha T. Loring, trustee, dated 12th day of June, 1868, bearing the following memorandum in pencil on lower margin of face: "One-half of the above belongs to C. H. Palmer. E. T. L."

214 Q. I now show you a letter purporting to have been written by Mr. Palmer, dated September 1st, 1865; state whether that is his handwriting.

The paper shown to witness is marked Exhibit 3.

A. That is his handwriting.

The following is a copy of Exhibit 3:

PONTIAC, *Sept.* 1, 1865.

E. T. LORING, ESQ.:

DEAR SIR: I have your letter of the 29th. * * * I will take that File interest. Heywood's note is for $5,000, dated June 1st, 1865, but with interest from July 1st, 1863, so that there is now due $5,650. Could I not endorse this payable in six months from September 1st, and not ask H. to give a new note? I will write H., asking him to give me a new note, or rather two notes, so as to have one for $5,150. I think Mr. Odell and party will be in Boston next week. Yours, truly,

CHAS. H. PALMER.

Q. State whether the letter I now show you, of Sept. 19th, is in the handwriting of Palmer. Handing a paper to witness.

A. It is so, sir.

Paper marked Exhibit 4, of which the following is a copy:

PONTIAC, *Sept.* 19th, 1865.

E. T. LORING, ESQ.

DEAR SIR: I have your letter of the 15th. Contents noted. I

hope you will succeed in selling the balance of S. P., and I shall give you timely notice before the money is drawn.

I send you Heywood's note for $5,150, six months from Sept. 1st. I did not make it payable at a bank, as I feared he would not sign it. H. says he can pay it at maturity. You will see that everything is made satisfactory with the File Co., and advise me of the result. I shall go in to Detroit this week in regard to an engine.

215 I wrote you that the Dr. was on his way down. Iron interests are looking up, and we may get our pay after all.

Yours, truly, CHAS. H. PALMER.

In regard to the File Company, I will say that a *good* company can make money in making files by hand, and this Company, well managed, ought not to fail, though this machinery may not succeed to their satisfaction. I trust in you in this matter, and if you think as you did when I saw you, arrange it as was talked.

Q. State whether the note I now offer you is the note charged in your account as No. 12.

A. It is, and was given to Mr. Bird in connection with that contract.

Q. And who paid it?

A. It paid it; it bears my endorsement.

Paper referred to is here marked Exhibit 5, being a note for $5,000, and dated March 1st, 1866, payable six months after date to the order of E. T. Loring, and signed by Chas. H. Palmer. The note bears the endorsement upon its back of E. T. Loring and Lewis J. Bird, also the following endorsement: "Paid. E. B. Moore, Teller."

Q. State whether any account has been rendered to Mr. Palmer, containing a charge for the payment of that note.

A. There has.

Q. State whether that is the original of which a copy has been rendered. Handing a paper to the witness.

A. That is the original, of which he had a copy.

Q. State whether any objection was ever made to the charge for the payment of that note.

A. None whatever.

The paper is marked Exhibit 6, and offered in evidence.

## EXHIBIT NO. 6.

C. H. PALMER IN ACCOUNT WITH E. T. LORING.

1865.

| | | | |
|---|---|---|---|
| Oct. | 3. | To amount remitted R. H. Rickard per order | $1,500 00 |
| | 24. | " amount paid E. D. Brigham, S. W. H | 2,420 00 |
| | 27. | " amount draft favor of G. H. Sanford | 2,000 00 |

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| | | | | | |
|---|---|---|---|---|---|
| 1865. | | | | | |
| Nov. | 14. | " am't d'ft W. B. F. favor of John Senter | $450 00 | | |
| | 28. | " amount W. B. Frue | 600 00 | | |
| 1866. | | | | | |
| Jan. | 12. | " amount trans'd to acc't of W. B. Frue | 2,535 75 | | |
| Mar. | 9. | " amount draft favor of J. N. & Co. $150; cash, $100 | 250 00 | | |
| May | 18. | " cash paid his note this day | 2,500 00 | | |
| | 18. | " cash paid Tilton on his account | 3,600 00 | | |
| Aug. | 13. | " amount draft in favor N. B. H. | 200 00 | | |
| Sept. | 1. | " amount draft favor J. B. Ross | 150 00 | | |
| | 4. | " amount note paid L. Bird | 5,000 00 | | |
| | 29. | " cash | 100 00 | $21,305 75 | |
| Nov. | 1. | " assessment on 250 shares South Pewabic | 750 00 | | |
| | | " 100 shares Hecla M. Co. stock, cash Oct. 17 | 6,000 00 | | |
| | 17. | " amount his note paid at Barnstable Bank | 2,500 00 | | |
| 1867. | | | | | |
| Feb. | 19. | " cash $225; 21st, $100; 25th, $700 | 1,025 00 | | |
| Mar. | 4. | " cash $200; 21st, cash $140 | 340 00 | | |
| April | 1. | " assessment on 100 shares Hecla | 300 00 | | |
| | 3. | " cash paid account smelting works L. S | 1,086 40 | | |
| May | 7. | " cash $50; 17th, cash $22 | 72 00 | | |
| | 20. | " cash | 150 00 | | |
| June | 25. | " draft favor of J. Chassell, 29th $100 | 200 00 | | |
| July | 15. | " assessment 100 shares Hecla | 500 00 | | |
| Aug. | 6. | " assessment 250 shares S. P. with interest | 1,259 79 | | |
| | 9. | " cash paid for renewal of notes Barn'l Bk | 350 00 | | |
| | 27. | " draft his favor | 200 00 | 14,733 19 | |
| Sept. | 19. | " to assessment paid on 1420 shares Adams stock | 2,912 90 | | |
| Nov. | 8. | " assessment p'd on 250 shares S. P. *a* 3 | 757 88 | | |
| | 18. | " assessment p'd on 250 shares S. P. *a* 4 | 1,000 00 | | |
| | 20. | " draft in favor of Mrs. Palmer | 300 00 | | |
| | 21. | " assessment on 100 shares Hecla | 1,005 00 | | |
| | 27. | " draft in favor of Mrs. Palmer | 100 00 | | |
| Dec. | 10. | " draft in favor of Mrs. Palmer | 300 00 | | |
| | 17. | " assessment on 1420 shares Adams stock | 4,315 50 | | |
| | 31. | " balance on land account, with interest | 18,443 05 | | |
| | 31. | " difference in interest account | 556 87 | 24,691 20 | |
| | | | | $60,780 14 | |

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CR.

| | | | | | |
|---|---|---|---|---|---|
| 1865. | | | | | |
| Sept. | 12. | By amount received, J. H. Cotton 500 shares Adams | $3,000 00 | | |
| | 20. | " am't rec'd C. D. Head 200 shares Adams | 1,100 00 | | |
| Oct. | 4. | " " A. A. Frazier 500 shares S. P. | 3,000 00 | | |
| | | " " E. T. L. 11 shares S. P | 66 00 | | |
| Nov. | 20. | " am't rec'd on his note dis. at Barn. Bank | 2,887 50 | | |
| 1866. | | | | | |
| Jan. | 12. | " cash rec'd from Head & Perkins | 82 23 | | |
| Feb. | 26. | " cash rec'd on land warrants | 230 00 | | |
| Mar. | 30. | " cash | 100 00 | | |
| May | 2. | " by cash on 250 shares South Pewabic | 1,758 75 | | |
| | 18. | " am't rec'd on his note dis. by Barn. Bank | 2,407 50 | $14,131 98 | |
| | 28. | " am't rec'd from W. Cobb for 500 shares Adams stock | 2,917 20 | | |
| Sept. | 4. | " am't 1,000 shares Adams stock sold | 6,000 00 | | |
| | 27. | " ½ am't J. B. Ross's bill exting'h'ng title | 80 00 | | |

| | | | | |
|---|---|---|---|---|
| 1867. | | | | |
| Feb. | 15. | " net amount on note for $5,000 discounted at Barn. Bank | $4,807 50 | |
| | 25. | " net amount on note for $5,000 discounted at Barn. Bank | 4,807 50 | |
| May | 21. | " am't rec'd Ossipee M. Co. for serv. rend | 2,500 00 | |
| Nov. | 8. | " net am't his note $5,000 dis. 4 mos | 4,864 17 | |
| | 12. | " net am't his note $5,000 dis. 4 mos | 4,877 92 | |
| | 18. | " net am't his note $5,000 dis. 4 mos | 4,846 26 | |
| Dec. | 16. | " net am't his note $5,000 dis. 4 mos | 4,877 92 | 40,528 47 |
| | | Dec. 31, balance | | $6,069 69 |

Q. What have you to say in relation to the charges No. 68 and 70, for cash paid to the Weed File Co.?

A. Nothing further than the amount paid appears in these documents.

Q. For what was it paid?

A. On account of the File Co., or the Barrel Co., I can't say.

Q. Have you any receipts covering those two items?

A. Nothing further than what appears in the certificates.

Q. In the certificates of stock?

A. Yes, sir.

218 Q. What can you say as to having paid those sums for Mr. Palmer?

A. I paid them on the day they were entered to Palmer's account.

Q. State whether the item in this account, a copy of which was rendered to Palmer, the item dated May 18th, 1866, refers to the same note as charge No. 8?

A. That refers to the first note paid; yes, sir, No. 8.

It is admitted that Nos. 16, 17, 19, 20, 21, 22, 23, 24, 34, and 38 were paid by Mr. Loring, and the question is whether they are properly charged to Mr. Palmer.

Q. Will you state for what purpose those expenses were incurred, and how they were charged?

A. Those expenses were incurred at sundry times in the operations of which Mr. Palmer was engaged in—buying lands and bringing his friends into them. In the organization of companies, and under his direction, they were charged to the company, and Mr. Palmer had a copy of that account. It was presented to him from time to time when it was made out. He saw it daily and took no exceptions to it at all.

Q. State whether those items were entered in the land account or his private account?

A. They were charged to his private account, because I had no other account to charge them in, in view of his instructions.

Q. What do you refer to as "his instructions?"

A. He would say pay them and charge them to him.

Q. I next call your attention to No. 18, being the second $2,500 note?

A. That is a note entered in my book against Mr. Palmer at the time it was paid.

Q. By whom paid?

A. By myself.

Q. State whether that is also included in the account that is an exhibit in the case?

A. Yes, sir, it is so included.

219 Paper offered in evidence marked Exhibit 7, being a note for $2,500 and dated at Boston, May 14, 1866, payable six months after date to the order of E. T. Loring, signed Chas. H. Palmer and bears at the bottom the following: "Please notify E. T. Loring, No. 11 Change avenue." Upon the back is the following endorsement: "Elisha T. Loring. Pay E. A. Presbrey, Esq., cashier, or order. Amos Otis, cashier."

Q. I now call your attention to Nos. 26 and 27, in relation to Ossipee and its stock, the first being for allotment of stock, $12,542.50, and the next for certificates of similar stock, $966.67; state if you please what land, if you remember, was organized into the Ossipee Land Company?

A. I think it is section 26. I cannot give anything particular about the description. The whole of section 26. Subsequently all was conveyed to that company by Douglass and Sheldon to me, and by me to the Ossipee Mining Company, to me in trust.

Q. Who originally made the purchase of those lands—the contract for them rather?

A. It is my impression, to the best of my recollection, that was done jointly with Frue and Palmer. Frue was at the lake and there was constant telegraphic communication between us all.

Q. Look at the letter dated October 8th, 1876. Is that in the handwriting of Mr. Palmer?

A. It is so.

Q. And state whether it relates to this purchase?

A. You will have to get some body else to read it. I have no doubt but what it does.

Letter read to the witness.

Q. Then you say that relates to this purchase?

A. Precisely so.

Letter offered in evidence and marked Exhibit 8, of which the following is a copy:

ADAMS MINING COMPANY,
HOUGHTON, MICH., *October 8th*, 1866.

E. T. LORING, ESQ.,

220 DEAR SIR: I have to-day drawn on you for $1,000 in favor of treasury of M. L. Co. This draft will remain here till my application for section 36, town 56, range 33, 1°, is acted upon. The land in this section joins on the south the Hecla, and lies thus: (In the letter here occurs a diagram.) The vein runs through the northwest quarter, and I have an application for it at $100 per acre. The M. L. Co. own the parts marked *X*, 400 acres. It is a

round price, and I think the application will be approved. It ought to be approved, for the price is very high for the amount of vein upon it. I am to pay $8,000 down; balance in three and six months. This is the first land south, as section 6 is north. Section 6, with the 80 in section 1, is so far north from the working of Calumet that it will take more time to examine it and find where the vein is likely to run. I feel confident that there is enough vein on section 26 for us to handle it safely. We have not examined it enough to tell fully where it does run, but I think it can be determined within certain limits. I wish you would see Bigelow and urge a decision of this question as soon as possible, for the reason that I need to examine it while I am here. I put down the vein here as D'Aligny and Wood run it, both having been on to examine this land. See that section 6 and the 80 in 1 is held by Bigelow until I can decide to take it or not. If any one offers in good faith $100,000, then let him notify me, so that I can take it or not at that price, as I shall choose at the time. I can answer by telegram, promptly.

You will need to recollect what I have written about Calumet and Hecla. I take back nothing.

Yours truly,

CHAS. H. PALMER.

Q. State whether the letter I now show you, written by Palmer, and dated October 14th, 1866, relates to the same transaction?

A. Yes, sir; I only have to read one line.

(Letter offered in evidence, and marked Exhibit 9, the following being a copy:)

221 SOUTH PEWABIC COPPER COMPANY,
HOUGHTON, MICH., *October 14th*, 1866.

E. T. LORING, Esq.

DEAR SIR: I have your letter, and note contents. Shall see the timber for stamp building is attended to. S. P. and Adams are looking finely, very finely indeed; never better. These stocks would be twenty dollars if it was not for Calumet. Railroad all let. We have bought, as I think I wrote you, 400 acres in section 26; this will make a stir, as the vein is all of 3,000 feet on it, as we think. From this the vein runs for a long way on private property, which is mostly in a swamp. Frue has been on the line, and in section 34 he was one and a half hours in going through an alder swamp. It is equal to any swamp in the country. I want you to buy in 34 and 27 for Frue, yourself, and me, all of Patrick's interest in the land, and perhaps E. D. Brigham will sell you the whole to effect the sale, and then we can hold a part or all of E. D.'s interest in it for him. He may be willing to lessen his half interest some to help us. I should write E. D. directly on this subject, but it may be better to write to you, as I do not know Patrick or E. D.'s *relation* to him. You understand I do not wish you to take any advantage of

him, and can show this letter to him, unless you find he stands in this matter with Patrick in such a way as will oblige him to *tell* what he *knows*.

I want you at once to perfect an organization for the *Mingo Mining Company*. Get everything ready, and advertise at once. If you do not like the name, telegraph the name you prefer, and I will answer, so as to have no delay in this matter.

This name was that of an Indian tribe. "Logan was of the *Mingo* or *Cayuga* tribe."

We cannot be certain of the line, but we think it rather east than west. D'Aligny and Wood now think the line is much further east than they had supposed, and D'Aligny thinks now we have a great thing. I am strongly of the opinion that we shall find the vein rich. We are keeping this thing unknown as much as we can. Bigelow has asked one-quarter for himself and friends. This 222 I shall give him; but I want him to be sparing of his promises on his quarter till we see how our mutual friends can be provided for.

Yours truly,

CHARLES H. PALMER.

Do not lose a moment in seeing to this land, and it may be, you you had better go at once to E. D., who may be able to get Patrick's interest. I ought to have written this sooner. *Lose not a moment;* there are 320 acres; give $10, $15, $20, or $25 per acre; if too high make a contract and take time to advise with us by telegraph; you know we can't be quite correct with the line, but as soon as our work is found out this land will be sought, and will be valuable; D'Aligny has an eye to this, and Beck takes this and may be after this land, though D'Aligny will be friendly to us and will be with us.

Q. Does that relate to the same?

A. It relates to the Kearsarge, and I don't know but more or less to the Ossipee.

Q. The Kearsarge and the Ossipee were purchased about the same time?

Q. State whether the letter of Palmer's I now show you, dated October 17th, relates in part to the same transaction?

A. It does so.

Q. And whether it also relates to the Kearsarge?

A. Yes, sir; certainly; it refers to both transactions—Kearsarge and Ossipee.

Paper marked Exhibit 10 and offered in evidence; the following being a copy:

SOUTH PEWABIC COPPER COMPANY,
HOUGHTON, MICH., *October 17th*, 1866.

E. T. LORING, Esq.,

I received your telegram in regard to half interest in your pur-

chase of 200 shares Hecla. You did not state price. I answered yes. Hecla will go up when Shaw returns. I think I should sell at $100, perhaps less. This will depend upon money that
223 may be needed on 26 and section 6, including 80 in section 1. We need to pay $6,000 down on 26 and $10,000 on section 6. Bigelow will show you what is to be done, and I shall write you more particularly when the papers come. We shall send or draw for the boys' part.

Come to an understanding with E. D. in regard to the land in 27 and 34. I am thinking that an understanding is all that is necessary, as I can do the rest when I come down.

I have been very much occupied since I have been here, and you must consult fully with Bigelow, as he will be posted.

The purchases I have made are good—nothing could be better, as matters now stand. I should not sell my interest in 26 for ten dollars per share, and the other will command as much.

Truly yours,

CHAS. H. PALMER.

Q. I now show you a letter of Palmer's, dated October 21st.

A. That also relates to both the Ossipee and Kearsarge.

Letter offered in evidence and marked Exhibit 11, of which the following is a copy:

OFFICE OF GRAND PORTAGE COPPER COMPANY,
HOUGHTON, MICH., *October* 21, 1866.

E. T. LORING, Esq.,

DEAR SIR: I have your two letters in regard to Globe T. R. R., and have had them passed to Noble and will have the matter looked over so as to be sure everything is well considered.

I received this morning your telegram in regard to name of 26. I do not like the name of Venus, as she is represented as doing some things that people in Boston might object to. I like the name Oneida better. It is the name of an old Indian tribe in N. Y. and of a beautiful lake in sight of which I was born and brought up, as well as the country where these Indians lived.
224 I think you had better sell my Hecla, as by the time this reaches you Shaw will be at home, and the stock will be sought for. I would sell only for the reason that we shall need the money in our late purchases of land.

The explorations on 6 are very promising. The soil is deep where the vein is thought to be, and 12 feet from the surface. We have taken out cong. that is as good as Calumet. Everything on this property looks exceedingly well. We could not find better indications on the Calumet itself than we have here, unless in the vein itself. The rich boulders are numerous. I think we may cut the vein in place any day.

We are doing nothing on 26. I deem 26 as a very fine property. If

we cut the vein on 26, as rich as indications promise, the stock will command $50 at once.

I am certain that this Calumet vein is one of great length and richness. Boulders have been found that cannot be told from the Calumet. From section 6 to near the Globe, on that side of the lake, not one boulder, but hundreds of them, at different points on the line. I have never been so surprised at any fact in the country as at this.

I wrote you to be ready when we drew on you for the $8,000 on 26. I have made a draft on you on this account for $1,000, and shall draw on my own account for $1,000 more; the rest for the boys and yourself. Bigelow will see that $2,000 is paid, though I may draw on you for the $7,000, telling you how the parties are to be credited, or, rather, charged. I shall know in regard to 6 when Bigelow's letter arrives. His telegram stated the payments would be arranged there.

Truly,

CHAS. H. PALMER.

If I find Hecla is $100, I shall telegraph you to sell, and you must sell at that figure, and less, if you need the money. We have now so much of the vein that I care less about Hecla.

Q. I now show you a letter dated 13th of October. What does that relate to?

225 A. That relates to the same transaction, and further, additionally, advising me of a draft of $7,000 on me.

Paper marked Exhibit 12, and offered in evidence, the following being a copy:

OFFICE OF GRAND PORTAGE COPPER COMPANY,
HOUGHTON, MICH., *October 13th*, 1866.

E. T. LORING, Esq.

DEAR SIR: I found to-day that Oneida has been used by a mine in the Ontonagon district. Mingo is a good name, and will be liked. You had better take it, and I shall telegraph you to-morrow to that effect, if the line is working. Venus would not do at all. We believe we have in 6 and 26 very fine property. There will be no difficulty in placing their stocks at $25 to begin with. We have not explored yet 26, as we were the best assured of this property. Our work on 26 makes it very evident to us that the vein runs through the center of the property and is rich.

Wood, of M. L. Co., wants 100 shares in each, and also 100 in each for his employees, and has written to Bigelow in regard to it. I shall see that Wood has 100 in each, and perhaps among us we can let his employees have the other 100 in each. D'Aligny wants 1,000 in section 6, and must have it. Will the half in Boston do one-half of this? I think we should be cautious in promises in these two things, but we ought to provide for those who have aided us.

We have had a great storm, and the snow is four inches deep. I

think we will soon have pleasant weather. We are feeling badly, as we need every moment to explore. Do not get anxious, as we feel confident we have a good thing, and we shall not lose a market.

To-day I drew on you for $7,000, the amount to be paid down on section 26, with the $1,000 before notified. You will use what you may need of Frue's, David and J. C. Hodgson's money, and call on Bigelow for $2,000. I do not know exactly the arrangements on section 6, but shall when Bigelow's letter comes to hand.

226 I wrote you in regard to selling the 100 shares of Hecla. I want this done at $100, or before, if you need the money. I feel we have a good thing.

Yours truly,

CHAS. H. PALMER.

I suppose the balance on section six is three and six months, as I have arranged on section 26.

Q. I now show you a letter dated October 25th, of Mr. Palmer's, what does that relate to?

A. It relates to the same matter, to the same transaction, and casually remarks as to the division of stock.

The letter referred to is offered in evidence, and marked Exhibit 13, of which the following is a copy:

OFFICE OF GRAND PORTAGE COPPER COMPANY,
HOUGHTON, MICH., *October 25th*, 1866.

E. T. LORING, ESQ.,

DEAR SIR: I have your letter of the 19th, and read it to Frue. I have a letter from Bigelow of the 18th, in which he says you did not take an interest in the half in Boston, but paid the money on half. I do not quite understand this, as my telegram put you in that half, for the reason that I wished as large an interest in this property as we could get, and all you took out of that half was so much added to our side, including your own. This property divided into two companies can be sold at ten dollars per share, largely here. There is no telling what it will be when the vein is cut. The vein is there rich, as the vein matter deep in the soil abundantly shows. We have made cheap and valuable purchases. We are exploring on 6 with fine prospects. We do not trouble 26 yet. A snow storm has put us back. D'Aligny and E. D. Brigham must be taken of in the Boston half if you are in our half. This is very important, as E. D. will be important in further operations.

I said to D'Aligny that we should reserve for him 1,000 shares if you were in the Boston half. If not, that half must do the same. I

227 have written you to sell Hecla as we need the money in this purchase. I should sell. I would have sold at the $75. I would not wait for a higher price. We need to look out ahead and see where the money is coming from. I suppose we have three and six months on the balance of 6, the same as on 26. I have no

fears about money when I can get down, as I can make the final payment easy enough.

The south half of section 6, with the 80 in one, will make one company, and the north half of section 6, and the 160 in section 5 will make another. The whole can be sold now and much of it here, at $10 per share. I do not say that I would sell at this at all. If we cut the vein, $20 would be no price. I am just as confident that the vein is there rich, as if I had seen it. Where does the coper vein matter come from that we find near the bed of the rock?

If we had not been stopped for three days, I believe we should have cut the vein before this.

Yours truly,

CHAS. H. PALMER.

I said I did not quite understand why you did not go in on that half in Boston. In fact it is a mystery to me, but it may be I shall fully understand when I get a letter from you. I accepted for Frue the terms of the company, and gave in his behalf parties in Boston the right to take half interest. I have no doubt your letter will make it plain.

Q. Who paid for the lands purchased as indicated by these letters, and which were afterwards organized into the Ossipee?

A. They were paid for by drafts remitted by Frue principally.

Q. No, I am asking who paid the land company?

A. Who paid the land company?

Q. Yes, sir.

A. Which land do you refer to?

Q. The Ossipee?

A. O, I paid for them. If it is necessary I have the vouchers here.

MR. SEAGER. The Mineral Land Company, you mean?

A. Yes, sir.

228 Mr. WALKER—What was the amount of the purchase?

A. We paid $40,000 for the Ossipee. He then paid $50,000 additional, $40,000 of which was the Kearsarge and $10,000 for the——

Q. No; I am confining you to the Ossipee.

A. I paid that $40,000.

Q. Whether afterwards any further amounts were paid for the Ossipee?

A. Yes, sir.

Q. Paid whom?

A. Douglass and Sheldon.

Q. What amount?

A. $25,000.

Q. Whether you paid for it or somebody else?

A. I don't know exactly how to answer the question, inasmuch as it was paid by Mr. Palmer in New York in the first instance by drafts which he received from Frue. Subsequently Palmer was

credited the amount received from the Ossipee company $1.50 a share in the way of assessments.

Q. What assessments were put upon the Ossipee?

A. In the first place the assessments were $2.

Q. The gross amount?

A. $3.50.

Q. No; the whole amount; what does it come to—the assessment?

A. $70,000.

Q. Who paid the assessment into the treasury?

A. I paid the amount into the treasury for Palmer and his associates, and the Boston party paid in their proportion of it.

Q. You state the amount of the Douglass and Sheldon purchase was $25,000; how much did the company pay for it? Did they pay any more than was paid to Douglass and Sheldon?

A. They paid a trifling amount of interest and paid Palmer $5,000 for his negotiating the sale of land.

Q. Did you receive any more than you paid for the land?

229 A. Not one dollar; not one dollar.

Q. Under what arrangement was the stock of the Ossipee, after its organization, distributed?

A. According to the programme which I handed to you.

Q. It was distributed according to Exhibit 14?

A. Yes, sir.

Paper referred to is here marked Exhibit 14 and is offered in evidence.

| Original stockholders in the Ossipee Mining Company. | No. shares to each. | Cost of land per share. | Assessments per share. | Total cost. | Price per share on sales. | Profits per share on dittd. | Net cost per share. | Total net cost. | |
|---|---|---|---|---|---|---|---|---|---|
| *E. T. Loring | 2,250 | 2 | $3 50 | $12,375 00 | $11 50 | 66 66/100 | $4 83 33/100 | $10,874 93 | Paid in full. |
| C. H. Palmer | 2,220 | | | 12,210 00 | | | | 10,729 93 | Paid in part.* |
| A. H. Sibley | 1,470 | | | 8,085 00 | | | | 7,104 95 | Paid in part.* |
| E. D. Brigham | 750 | | | 4,125 00 | | | | 3,624 98 | Paid in full. |
| W. R. Noble | 375 | | | 2,062 50 | | | | 1,812 49 | Paid in part.* |
| S. Mandlebaum | 375 | | | 2,062 50 | | | | 1,812 49 | Paid in part.* |
| C. H. Palmer, Jr. | 375 | | | 2,062 50 | | | | 1,812 49 | Paid in part.* |
| P. Hall | 250 | | | 1,375 00 | | | | 1,208 33 | Paid in full. |
| De Alleganey | 75 | | | 412 50 | | | | 362 50 | Paid in full. |
| Wood | 75 | | | 412 50 | | | | 362 50 | |
| *Lantern | 225 | | | 1,237 50 | | | | 1,087 49 | |
| J. Williams | 150 | | | 825 00 | | | | 725 00 | |
| William B. Frue | 2,250 | | | 12,375 00 | | | | 10,874 00 | Paid in part.* |
| J. C. Hodgson | 1,313 | | | 7,221 50 | | | | 6,346 12 | Paid in part.* |
| David Hodgson | 1,313 | | | 7,221 50 | | | | 6,346 12 | Paid in part.* |
| * Contingent | 534 | | | 2,937 00 | | | | 2,580 98 | |
| H. Bigelow | 1,600 | | | 8,800 00 | | | | 7,733 28 | Paid in full. |
| J. W. Clarke & Co. | 1,600 | | | 8,800 00 | | | | 7,733 28 | Paid in full. |
| Dupree, Beck & Sayles | 800 | | | 4,400 00 | | | | 3,866 64 | Paid in full. |
| Stock sold | 2,000 | | | 1,100 00 | Sold 23,000 Cost $11,000 | | | 12,000 00 | Paid in full. |
| Total No. shares | 20,000 | | | 99,000 00 | | | | 98,999 43 | *See account C. H. Palmer. |

*From the contingent and Lantern stock Frue has donated Lantern 200 shares, Hocket 100 shares, Stevens 50 shares, Mack 50 shares. } Assets paid.

From the stocks within this bracket there are to be deducted 50 shares for which certificates were sent to the Lake and 50 shares were allotted to L. B. Frue.

Q. When and where was Exhibit 14 prepared?
A. Prepared in my office.
Q. When—about when?
A. About the time of the organization of the company: I say it preceded the issuing of any stock whatever.
231 Q. Who was present when that exhibit was prepared?
A. The matter was consulted with Palmer and some other gentlemen in Boston, who were interested, and myself.
(Question repeated.)
A. Mr. Palmer was present, but I ought to say previous to that—to the exhibit; it was according to the understanding after the allotments of it.
Q. In whose handwriting is that exhibit?
A. Of the young man in my employ at that time.
Q. What name?
A. Hadley.
Q. Was this paper made at that time?
A. It was.
Q. This is the original?
A. It is the original.
Q. State whether, when completed, it was exhibited to Mr. Palmer?
A. It was.
Q. And how was it about meeting his approval?
A. Not any objections whatever taken to it.
Q. How was it about its being prepared in accordance with the understanding between you and him?
A. Precisely according to the understanding. I think I ought to be allowed to state, however, that the Boston gentlemen's stock was distributed to them precisely in accordance with the balance sheet, and that they accounted to the treasurer for the assessments on each allotment. I accounted to him for the allotments to Palmer, Frue, and his associates, and no exceptions were taken by any of the gentlemen of the Boston party. Some changes were made subsequently.
Q. State who paid the assessments upon the stock allotted to C. H. Palmer and C. H. Palmer, Jr.?
A. I paid it.
Q. What items then go to make up this $12,542.50, being No. 26?
A. The cost of the stock, the cost of the 2,595 shares
232 at $4.83⅓, making up the $12,000, and the stock allotted corresponds with that.
Q. That includes both the original stock and the assessment?
A. Yes, sir.
Q. And I will ask you right here whether you have any original books of entry made at this time?
A. No, sir.
Q. What became of them?
A. Burned.

Q. When?

A. In the great fire in Boston in 1872.

Q. How is it that your papers were not burned?

A. A copy of these papers, letters I had selected and put into the safe, having some question about the settlement, put into the safe copies of the original accounts, letters, etc.

Q. This is a letter you received from Mr. Palmer about the time of its date, July 15th (handing a paper to the witness)?

A. Yes, sir.

Letter marked Exhibit 15 and offered in evidence, of which the following is a copy:

SOUTH PEWABIC COPPER COMPANY,
HOUGHTON, MICH., *July 15th*, 1869.

E. T. LORING, Esq.,

DEAR SIR: We arrived here Monday morning last, Duffield on Saturday evening before us. Monday the little assay office was fixed up for his use, and on Tuesday morning he began work. Duffield brought with him all the instruments and chemicals needed from London, among them very expensive scales for weighing carefully his results. He is at his experiments all the time and taking samples from every part and kind of tailings. They are in earnest, no doubt, and believe they have something. Yesterday McEwen decided to return to London and leave Duffield to go on with his experiments. McEwen will return in September. These matters want to be kept still, because if they are correct there
233 will something important come from it. I have obtained this much, that from Duffield's experiments last winter he found we were losing over one per cent. of copper, nearly all of which he believes can be saved—say 75 per. cent of ingot that we ought to save.

I am more and more of the opinion that there is something of importance here, and that McEwen returns because he has been fully convinced by seeing Duffield go over with the experiments and seeing where he got his samples and that there could be no deception about it. McEwen will write or telegraph you on his way down. I hope something will come of this. The Mendota people expected that they would go to Lac La Belle, but they do not seem to look that way. They do not say exactly what they are doing, but what I have stated I have seen on paper from them. Frue has their confidence fully, and what we obtain I judge most likely will come through Frue. McEwen is a brother Scotchman. In the stock of the Ossipee was one hundred shares to Richard Peters and one hundred to John King, who were promised this to keep still, they having found the big mass by following the lantern. Send Frue 100 shares in the name of Richard Peters, and 50, 25, and 25 in the name of William B. Frue, who will use it for John King, John King having left and Frue having become responsible to his creditors for this stock.

The mill and mine are about as usual, and I find nothing new. John and David are looking for lantern and have faith. S. L. Smith is here and has talked some about Ossipee and 27. I believe something yet will turn in our favor. I do not believe Duffield and McEwen would be at so much pains for nothing. Write me what you hear from McEwen.

Truly yours,

CHAS. H. PALMER.

Q. Will you state the origin of the charge No. 27, for certificates of stock?

A. The origin was as shown by Palmer's letters. It appears Mr. Palmer and Frue had made promises to certain gentlemen residing at the lake to "keep dark," to use their expression, and to
234 induce them to keep their promises they promised them some share of the stock. Some time transpired before Mr. Palmer wrote to me for that stock. In order to keep the peace with these gentlemen at the lake I wrote to Palmer, and this is a copy of the original. I wrote to Palmer, stating to whom the stock was issued—I think I wrote to Palmer, stating to whom the stock was issued.

Q. Have you a letter present which is a copy of that?

A. Yes, sir.

Q. This was taken from the letter press copy?

A. Yes, sir.

Witness produces a letter which is offered in evidence and marked Exhibit 16, of which the following is a copy:

BOSTON, *July* 22, 1869.

C. H. PALMER, ESQ., *Houghton.*

DEAR SIR: I have your favor of the 15th and note contents. As a "consoler" I wish I could have and realize your faith in the future of our operations, which I should be most heartily glad to have realized. On the contrary, I have good reason to suppose that notwithstanding all my past efforts and *sacrifices* to sustain the S. P., they are from month to month running into debt again, and what is to be the end God only knows, unless some material change takes place in the copper market, of which there is not much hope at present.

I have a few lines this morning from McEwen, stating he left yesterday for home, to return in September. Nothing on other points any way satisfactory. There is still to the credit of contingent stock 400 shares of Ossipee to make good Frue's promises, though it cannot be issued without votes of the directors, and I have not brass enough to ask for a vote at this time. As I have before stated, no further issue of trustee stock can be made till all arrearages of assessment is settled with my land account. Not to disappoint you I will loan to you individually from my stock, the number of shares asked for, as a *matter of honor* between us, which you are to
235 account to me for. Therefore I have issued the certificate in

your name. If these conditions are not acceptable, you will return the certificate without use.

Yours truly,

E. T. LORING.

Q. Exhibit 16 was written in reply to a letter of Mr. Palmer?
A. Yes, sir.
Q. State whether you subsequently wrote to Mr. Palmer upon that subject, with others?
A. Yes, sir.
Q. And is the exhibit you now present a copy of that letter?
A. It is; yes, sir.

The paper presented by the witness is here marked Exhibit 17. The following being a copy thereof:

BOSTON, *August 30th*, 1869.

C. H. PALMER, ESQ., *Houghton.*

DEAR SIR: Your favors of August 9 and 21 were received in due course of mail. I did not reply to the first for the reason you remark therein, you *should write* me again in a few days, intimating that you might have something more important to communicate. The second letter is of similar purport to the first, and I regret to say not so promising as I had hoped. The course of McEwen does not give me so favorable an opinion of their success as I had been led to believe. However, I am not without some hope. Though as time wears away they are growing "beautifully less."

I notice your remarks about the L'Anse lands, and I trust all your expectations will sooner or later become realities. On reading your remarks about openings on section 7, I could not refrain from a good laugh, showing as they do how erroneous your views are on the state of people's feelings here on copper; why you could not get up any excitement with us unless you earn and declare a dividend on stock before an assessment is called in.

I presume if you have used those 200 shares of Ossipee
236 stock, it has been done in full view of the conditions I named, with the intention of literally complying with them. It would have been quite proper to have said so in one of your letters.

Yours truly,

E. T. LORING.

Q. Look at the writing I now show you (handing a paper to the witness), and see in whose handwriting it is?
A. It is Mr. Palmer's.
Q. Have you any means of ascertaining when it was received by you?
A. "In the letter of September 18, 1869," that is my pencil.
Q. Do you know where the letter in which it was enclosed is?
A. I gave it to you this morning. If I did not give it to you I have it.

The letter just produced by the witness is marked Exhibit 18, of which the following is a copy:

SOUTH PEWABIC COPPER COMPANY,
HOUGHTON, MICH., 186

In looking over your letter of July 22 in regard to the 200 shares of stock, I find you say I must account to you for this stock. I have not used it. I understand from your letter, or think you mean that, so that you can account to the company, I must account to you. I did not promise this stock or give. It was the original agreement as I supposed. I, individually, have nothing to do with it. I sent for it because the parties called for it; but since it came they have not seen me. Am I right in this matter? Is this what you mean? * * *

Q. Was that stock ever returned to you referred to in the charge No. 27?

A. No.

Q. I now call your attention to your credit account No. 43. What does that relate to?

A. That relates to a sale made by me to a gentleman here in Boston. That was a sale of the stock of the Ossipee Com-
237 pany from Palmer and his son to a gentleman here in Boston, for which I received the price stipulated in March, 1872.

Q. State whether Mr. Palmer, the complainant. was responsible for the stock alloted to his son; whether he assumed that stock?

A. He assumed that, inasmuch as there was nothing paid on account of his son; and you single out that single transaction, charge what it cost and credit him with what he received, and he made money out of it. There was never any objection made to it.

Q. What price per share did that stock bring when sold?

A. Five dollars.

Q. What can you say about its being then its market value?

A. It was considered very well sold at that time.

Q. What has been its value, compared with that price, since?

A. That is a difficult question to answer; but I will explain to you the facts: A gentleman who bought from me, and I bought from others at the same rate I sold at, making up ten thousand shares of stock, something over ten thousand, was put into the hands of a gentleman who purchased from me to organize a new company, and he did so. He levied an assessment on the stock of the new company called the Osceola. The Osceola did not embrace all the lands of the Ossipee, but embraced the most valuable part of them. And the stock; that is, the original stock and the assessments of the Osceola, has been paid by the original proprietors to the amount of $22.50 a share. That stock has subsequently sold, after all assessments, in this market, at $9 a share, and it has ranged all the way from $9 to $16 a share. I saw by last week's reports it sold for $16.

Q. No matter about going into the reasons of it. Has the market

price of Ossipee stock proper, independent of assessments subsequently made, been any higher since the sale of 1872.

238 A. After the gentlemen here in Boston had got possession of 12,000 shares of that stock, they would not organize the new company until the old certificates were returned. I have understood that Mr. Clark bought some stock to complete his assessment at six dollars, six and a half. That is mere hearsay. Recollect, gentlemen, that the very fact that this stock was sold for the organization of a new company, gave additional value to the Ossipee stock. If it had not been for that I would not have got three dollars.

Q. How much did you get for your stock?

A. The same.

Q. How much did you sell?

A. I owned 2,200 shares, and I sold that, and my friends sold at the same price.

Q. In whose name did the stock that had been allotted to Palmer and his son stand?

A. In my name, as trustee.

Q. Had there been any attempt made to sell this stock that you sold as trustee, of Palmer and his son, previous to this, and if so, when?

A. Yes, sir; I can't recollect the date, gentlemen, precisely, but I think it was in 1870.

Q. Yes, sir; it was.

A. 1869.

Q. No, 1870.

A. No, 1869. One word. At that time being in necessity of money, I requested Mr. Palmer—

MR. POST. Is that in writing?

A. Yes, sir; in 1869 I wrote to Mr. Palmer to settle his accounts; that unless his accounts—

MR. POST. I object to your giving such evidence, if it was in writing.

The witness continues—twelve months from that date I sold that stock at public auction, advising Mr. Palmer of that fact.

MR. POST. You advised Mr. Palmer by letter?

A. Yes, sir.

MR. SEAGER. In 1870 you sold that stock at auction?

239 A. Caused it to be sold; yes, sir.

MR. WALKER. At what rate per share was the Ossipee sold?

A. I could not tell; a very small amount.

Q. Less than in 1872?

A. O, bless you, yes; sold for a very small amount.

Q. State whether you had any advice that that sale was a valid one?

A. I subsequently learned from my attorneys that it lacked some legal technicalities of the law, and I took the stock into my own hands; annulled the sale of the property, and notified Palmer that I had it in my hands.

Objected to, the notification being in writing.

THE WITNESS. It is not alone in writing. In October 1870, I was in Detroit. At least I had previously notified him that the sale would take place.

MR. POST. I object to your stating in your evidence the contents of letters.

THE WITNESS. I won't allude to the contents of letters. I stated to Palmer in Detroit, in October, 1870, that I had bought all the stock of the pretended sale of collaterals; had it in my possession, and I should be happy for him to settle his accounts and take his stock.

Q. No. 28; state whether the property which afterwards organized into the Kearsarge Company, was purchased at the same time and by the same negotiations referred to in the letters already in evidence?

A. Yes, sir.

Q. What was the cost of the land organized into the Kearsarge?

A. $50,000 was paid in for the land which originally embraced what was designed for the Kearsarge Company. Subsequently there was that $50,000 paid to the Mineral Land Company, we charged the Kearsarge with $40,000, and laid an assessment of $2 a share, making $80,000, and the $10,000 went to the payment of the Iroquois.

240 The original purchase including the Kearsarge which was organized, and the Iroquois which was in contemplation. We paid $50,000 on account of Kearsarge, which was two dollars and a half for the lands, and two dollars for assessment, and we paid $10,000 for the account of the Iroquois.

Q. Who paid for those lands organized into the Kearsarge—who paid the Mineral Land Co.?

A. I paid for my own interest and that of Mr. Palmer, Frue, and associates, myself. A Boston gentleman paid for their (the Boston) allotments.

Q. Who paid for the assessments as well as for the land of these parties you have mentioned?

A. I did.

Q. State whether the stock of the Kearsarge was distributed; and if so, by what arrangement.

A. This is a schedule, or rather a division of the stock, prepared in the like manner as that of the Ossipee, with the names of the parties interested. (Witness produces a paper.) There is one thing further. Here are memoranda that I made, from time to time, as they were paid up. You will notice that all the stock was paid in full, with the exception of that in dispute.

Q. What in dispute?

A. A. Sibley in part, C. H. Palmer in part, William B. Frue in part, J. C. Hodgson in part, D. Hodgson in part. Those were delinquents who did not pay; and also William R. Noble in part.

Q. And that you paid?

A. I did. I paid myself for those gentlemen all the balance due on that.

Q. Was Mr. Palmer present when that was prepared?
A. It was prepared under his direction.
The paper produced by the witness is here offered in evidence, and marked Exhibit 19, of which the following is a copy:



EXHIBIT No. 19.

| Original stockholders in the Kearsarge Mining Co. | No. shares to each. | Cost of land per share. | Assessment per share. | Total cost. | Price per share on sales. | Profits per share on ditto. | Net cost per share. | Total net cost. | |
|---|---|---|---|---|---|---|---|---|---|
| C. H. Palmer | 1,800 | $2 50 | $2 00 | $8,100 00 | $10 00 | $1 83 33/100 | $2 66 67/100 | $4,800 06 | Paid in part.* |
| E. T. Loring | 1,800 | | | 8,100 00 | | | | 4,800 06 | Paid in full. |
| A. H. Sibley | 750 | | | 3,375 00 | | | | 2,000 02 | Paid in part. |
| C. H. Palmer, Jr. | 75 | | | 337 50 | | | | 200 00 | Paid in part. |
| Wm. R. Noble | 75 | | | 337 50 | | | | 200 00 | Paid in part. |
| Wm. B. Frue | 1,500 | | | 6,750 00 | | | | 4,000 05 | Paid in part. |
| J. C. Hodgson | 750 | | | 3,375 00 | | | | 2,000 02 | Paid in part. |
| D. Hodgson | 750 | | | 3,375 00 | | | | 2,000 02 | Paid in part. |
| Dupee, Beck & Sayles | 1,500 | | | 6,750 00 | | | | 4,000 05 | Paid in full. |
| J. W. Clarke & Co. | 2,062 | | | 9,279 00 | | | | 5,498 73 | Paid in full. |
| J. N. Denison | 1,000 | | | 4,500 00 | | | | 2,666 70 | Paid in full. |
| E. D. Brigham | 750 | | | 3,375 00 | | | | 2,000 02 | Paid in full. |
| F. Beck | 375 | | | 1,687 50 | | | | 1,000 01 | Paid in full. |
| Henry Sayles | 125 | | | 562 50 | | | | 333 34 | Paid in full. |
| Horatio Bigelow | 1,313 | | | 5,908 50 | | | | 3,501 37 | Paid in full. |
| H. Bigelow, Jr. | 375 | | | 1,687 50 | | | | 1,000 01 | Paid in full. |
| Sold | 5,000 | | | | | Sold 50,000 | | 27,500 00 | |
| | | | | | | Cost $22,500 | | | *See account |
| | 20,000 | | | 67,500 00 | | | | 67,500 46 | H. P. Palmer. |

Q. State whether your charge, No. 28, covers anything more than the actual cost of the stock allotted to Mr. Palmer?

A. Nothing more. Gave him the actual net cost.

Q. Look now at your credits Nos. 16, 17, and 18.

242 A. Those were stocks sold by Mr. Palmer to his friends, and when these gentlemen paid for them they paid it into my hands—I suppose, I don't know that it will make any difference, but I will state the facts. I was paid in the notes of A. H. Sibley. Subsequently had to take Adams stock in payment of them, for which I received little or nothing. I credited them as paid, though I never got my pay.

Q. Will you state whether those credits cover the whole amount you received for the Kearsarge stock alloted to Mr. Palmer and his son?

A. Covered the whole amount sold.

Q. Still some unsold?

A. Still some unsold in my hands, of Kearsarge. That was the whole gross amount received of what was sold?

Q. And these sales were made by Palmer?

A. Yes, sir.

Q. And what do you know about there being profits on these sales as charged in Palmer's account?

A. I don't know anything whatever, inasmuch as I charged him with the net cost and credited him with the amount received.

Q. Mr. SEAGER—Credited him with the gross proceeds?

A. Yes, sir; and there is still a balance of stock in my hands in his favor, on settlement of accounts.

Mr. WALKER—Q. Can you state how many shares were sold?

A. Well, sir, it is my impression, and I guess my memory is correct, there was sold 1,750 shares out of the allotment.

Q. And what was the allotment?

A. 1,875 is the allotment, of which 1,750 was sold.

Q. Look at your credits, No. 37 and 38, and see to what they relate?

A. Nos. 37 and 38. Mr. Palmer bought land of Williams in Detroit, for which he paid $2,500, and he subsequently gave me credit for it and charged it to the company, and $500 for services.

243 Q. I now call your attention to debtor No. 29; Iroquois $1,250. Will you state what that charge relates to? What is the basis of it?

A. Relates to the allotment which properly belonged to Mr. Palmer and his son, on the basis of the division of the Kearsarge, with the exception there was a sale made at the lake of 25 per cent. of the Kearsarge stock; but the original subscribers were obligated to take the same number of shares of the Iroquois, consequently Palmer and his son's allotment was 2,500 shares.

Q. That would be the proportion, would it, one-quarter?

A. Yes, sir; one-quarter.

Q. Give us very briefly the history about the Iroquois; what became of the land that was organized in the Iroquois?

A. $10,000 was paid into the Mineral Land Company, with the expectation that the company would be organized; but failing to find the development of copper originally expected, it was the opinion of the stockholders that we would abandon that $10,000 and not organize any company, and that was agreed to by Mr. Palmer.

Q. Then there was $10,000 sunk in the Iroquois?

A. Yes, sir; and a most unfortunate thing it was for us.

Q. I show you a paper, dated November 27th, 1866; state whether that is Mr. Palmer's handwriting?

A. Yes, sir; that is Mr. Palmer's handwriting; I don't know what it alludes to.

Q. It refers, among other things, to the Iroquois.

Paper marked Exhibit 20 and offered in evidence, of which the following is a copy:

NEW YORK, *November 27th.* 1866.

E. T. LORING, Esq.

DEAR SIR: I have your letter of the 28th. I spoke of your retaining all of section 6 in case you wanted to do so, as I thought you did not like so many sales. We can manage this as may be best.

I wanted you to make yourself strong in money matters, so that in case I could make valuable purchases we could swing them and not be dependent on others. In this case we will have some-
244 thing to say in the division of the property. This is between us. I want to look out for those who do *all the work.*

I think you can promise parties stock in the Kearsarge at twelve dollars; and also in the Iroquois, to those we want to let in, at a moderate figure.

Sheldon is here, and I think I shall not be detained long.

I wish you would have Henry Crocker sell his Pewabic.

Stock in Ossipee at $25 is better than Pewabic or Franklin at the prices at which they are selling.

This must be done carefully and only with trusty friends. There is a telegram here to the same effect about Adams. I know nothing more. It looks as if they had struck something. * * *

Truly yours,

CHAS. H. PALMER.

Q. I call your attention to Nos. 30, 31, 93, 94, 96, 97, 98, 99. Before I go into that I will get the preliminary statement, please, for the purpose of explaining, whether Torch Lake, being No. 30, and sections 35 and 36, being No. 31, belong together, and how? I first want to show what connection they have?

A. The Torch Lake, at the time the purchase was made, was an organized company on sections 35 and 36. There were two sections—

one of the two had been organized into Torch Lake and stock issued —the other, however, was called at that time Penn., and both were purchased by Mr. Palmer on Mr. Frue's orders.

Q. Was that which was called Penn. the other sections, afterwards incorporated into the same organization?

A. Yes, sir.

Q. And all belong together?

A. At the present time, they all belong together.

Q. And then Torch Lake was purchased through Palmer and belonged to the same parties that purchased the Penn.?

A. Yes, sir; that is, those who paid the assessments. We
245 laid an assessment of 75 cents a share on the Torch Lake stockholders, with the proceeds of which we satisfied the stockholders and owners of 35 and 36, and consolidated the two interests, and at present it is one company.

Q. Through whom did you first know of any project for purchasing this property?

A. From Mr. Palmer.

Q. Can't you fix the time?

A. Yes, sir.

Q. About when was it?

A. Under date of December 31st, 1866, that is the letter; (producing the letter), that is the date of the letter.

Q. Date of what letter?

A. Date of the letter received from Mr. Palmer.

Mr. SEAGER. Have you that letter?

A. Yes, sir.

Mr. WALKER. The original is an exhibit in the Frue-Loring case.

THE WITNESS. I would say a letter from Mr. Frue; that is a slip of the tongue.

Q. State whether Mr. Palmer showed you a letter from Frue, in relation to purchasing any portion of this property, and if so, about what time?

A. Mr. Palmer was at the office when the letter was received, and my young man, who was in my employ at that time, made a copy of the original letter. Mr. Hadley made a copy of the original letter.

Q Of the whole of it?

A. Only of that part relating to the purchase, the original copy of which I have in my possession.

Q. By whom were the negotiations for the purchase of Torch Lake stock and Penn. property, so called, made, and where?

A. By Mr. Palmer.

Q. Where?

A. In N. Y.

Witness here produces a letter dated February 13th, 1867; another dated February 14th, 1867; another dated February 20th,
246 1867; another dated February 26th, 1867; another dated February 27th; another dated February 28th, and several

other letters which are admitted to be in the handwriting of Charles H. Palmer, and are offered in evidence, being marked from Exhibit 21 to Exhibit 38 inclusive of both numbers, of which the following are copies:

NEW YORK, *February 13th*, 1867.

E. T. LORING, Esq.

DEAR SIR: I think I shall be here till Thursday night; but if I come before I shall send a telegram. I have written to Mrs. Palmer to let you see any letters or telegrams that may be important. If any important I want to know at once.

Truly yours,

C. H. PALMER.

You may be drawn on for about $3,200. We have bought in south half of 35 and 36—one-fifth interest—for this sum. This is a good beginning.

NEW YORK, *February 14th*, 1867.

E. T. LORING, Esq.

DEAR SIR: In writing you yesterday I was one day behind. I shall leave to-morrow night for Boston.

I drew on you to-day for $3,200 in favor of A. H. Sibley. This is for one-fifth of the south half of sections 35 and 36. I think we shall now do something, and have a prospect of getting a large portion of this property cheap. If we do not get as much as we should like, the balance will be in the hands of the strongest of men, and we can manage them.

Truly yours,

CHAS. H. PALMER.

NEW YORK, *February 20th*, 1867.

E. T. LORING, Esq.

DEAR SIR: I am here; was detained at Hartford by friends. Woodruff and Hamilton are not at home; will be next week. Have drawn on you for the $250. I have 7,000 shares of T. L. in my pocket. You may have written me letters which I have not received. I am at the New York hotel. Could not get in at 247 Fifth Avenue. I shall go to Fifth Avenue to-night. I now intend to return Friday night, unless something occurs to detain me.

Yours truly,

CHAS. H. PALMER.

NEW YORK, *February 26th*, 1867.

E. T. LORING, Esq.

DEAR SIR: I sent back the telegram from Milden. Milden has been on the Franklin from the beginning; is a man of correct habits, a miner, and carpenter. He has a good knowledge of machinery. His judgment is good, and is a man in whom I have great confidence. I wish you would say this to Col. Brigham, who is in

the Franklin board. I shall be in Boston before this question needs to be decided, most likely.

We expect to get all of the south half of sections 35 and 36, and we think now we can get more than 10,000 shares in the north half of these sections. I shall most likely draw on you to-morrow; will write you how much. I do not expect to be detained here more than two or three days.

Yours truly,

CHAS. H. PALMER.

NEW YORK, *February 27th*, 1867.

E. T. LORING, Esq.:

I received your letters inclosed from Frue this morning.

We have bought nine-tenths of the south half of sections 35 and 36, and the other one-tenth goes in with us—all but one-fifth—at the rate of $25,000 for 640 acres—$38.46 per acre.

We can, I am in hopes, get the north half of the sections at $30,000, as this will be at about the price the M. L. Co. sold the land originally. I think I shall be in Boston to-morrow evening or next day morning. I drew on you to-day at sight for $5,000, without grace.

Truly yours,

CHAS. H. PALMER.

I have seen Dr. McKenzie on L'Anse lands. He will know
248 in a day or two how matters stand in Connecticut. He says he is hopeful of success. I am doubtful about it. Shall see Smith and Martin.

NEW YORK, *February 28th*, 1867.

E. T. LORING, Esq.

I have drawn on you to day in favor of Sibley for $6,250, making in all $14,450 on account of the south half of sections 35 and 36. I shall not need to draw any more on this account at present. P. Hall and his friends take 3-20 of the purchase and pay $3,750. We shall soon have, I think, the control of the north half also. I may stay here to-morrow as Dr. McKenzie has not heard from Connecticut, though he sent a telegram to-day and expects an answer. I may have to see a little further how the north half is going to come. I suppose Bigelow will want an interest in this purchase, and E. D. also. There will be enough to go in with us in this matter. And as soon as I return I will settle this, and collect their proportion of the money.

Truly yours, CHAS. H. PALMER.

Received enclosed letters sent by you, this morning.

NEW YORK, *March 7th*, 1867.

E. T. LORING, Esq.: * * *

I have 3,000 shares of T. L. at 1.50, and 1,600 more that acts with

us. We shall, in time, get control of Torch Lake. I told Adams that the plan was important, and if anything detained him it should be forwarded by mail. Was the envelope stamped and directed? If so, no doubt it has gone forward.

I need not write to E. D. as this letter contains all I should say. Frue's telegram contains the information that the Calumet is opened on Kearsarge, and that they are finding very rich
249 floats on Iroquois. The telegram is very good. I saw signs today that the Calumet had been struck on sec. 6, but I could not tell whether it was true or not

Truly yours, CHAS. H. PALMER.

The draft of $4,000 and $450 are placed in the way of being collected.

NEW YORK, *March 24th*, 1867.

E. T. LORING, ESQ.:

DEAR SIR: I have your letter of yesterday. I enclose Douglass' note for $2,340.42, due 1st May. This note is for 375 shares of Kearsarge and 500 Iroquois. He will be entitled to the 375 Kearsarge when he sends for them.

The interest is calculated at seven per cent. to May 1st. The account is as follows:

C. C. DOUGLASS, DR.

| | | |
|---|---|---|
| For 500 shares K., @ $4.50 | $2,250 00 | |
| " Int., $1,250 at 7 per cent., 6 months | 43 75 | |
| " " $1,000 at 7 per cent., 3 months | 17 50 | |
| " 500 shares Iroquois, @ $2.50 | 1,250 00 | |
| " Int., $1,250, @ 7 per cent., 6 months | 43 75 | |
| | | $3,605 00 |

CR.

| | | |
|---|---|---|
| By 125 shares K., sold, @ $10 | $1,250 00 | |
| " Int. on $1,250, 3 months, 7 per cent. | 14 58 | |
| | | $1,264 58 |
| | | $2,340 42 |

I may be here a day or two yet. If any telegram comes of importance send it to me at this hotel. Perhaps if you telegraph before 11 a. m., it would be as well to send at 22 Pine street. I think I shall leave Monday night for Boston; if not, I shall certainly leave Tuesday night. I shall see what I can do with Sibley; I shall get something.

I think you can use Douglass' note the same as cash, with the discount. I have seen Smith, of M. & S.; he has not looked up the question of the chances of our suit; he is to do so, and write you his opinion.

Truly yours, CHAS. H. PALMER.

250 I say again that B. did not mean anything in what he said; I am sure of it. He was not in earnest. Hall has got some 4,000 shares of Torch Lake; that is the north half of 35 and 36. We now have in our ring enough to control the north half. I shall buy on 30 days some 2,000 shares, so as to make our side have about 12,000 shares. I think I shall do this; but not to call upon you for the money as there are enough to take it. But before I dispose of it shall see you. C. H. P.

$1.20 paid on this note for a *stamp*. Put one on; I will hand you the money.

NEW YORK, *March* 27, 1867.

E. T. LORING, Esq.

DEAR SIR: I have this p. m. received your letter of yesterday; a despatch to-day asking if I was coming home to-night. Before the receipt of this despatch I sent you one to send my letters over to-night, as I shall not come home to Boston before to-morrow night, and not then unless I get some settlement with Sibley, who has been quite sick to-day and has not been in his office. If Cotton will take 500 shares interest in section 6, or 500 in K., and 500 in Iroquois, say you think you can get it for him at cost, $4.50 and $2.50. I would say nothing about *sales*. I wish to provide for this number of shares in case Sibley does not come to time on it.

Frue's despatch enclosed by you is *plain to me*. It means that Lantern runs about 800 feet east of the center of sec. 26 on Ossipee; that the line is well marked by conglomerate rocks, mostly very very rich, (broad cloth) as he has it. This carries Lantern well on to sec. 35, Penn., and he wants me to look out for Penn.

He has a *rich* opening on Kearsarge (Henry). The telegram is very important. There is no doubt of a very rich belt east of Calumet—a most wonderful belt. I do not think we should pay for the Iroquois until we get ready, and when I return to Boston I will have this fixed. The times are perfectly frightful in regard to copper matters. I can arrange here to buy all of Penn that we shall want, without calling upon you further, and at any rate
251 I shall not commit you any further than you think best. I shall be very careful. We have got hold of a fortune in 26, and we must hold on to it.

Truly yours, CHAS. H. PALMER.

REVERE HOUSE, BOSTON. *April 7th*, 1867.

E. T. LORING.

DEAR SIR: I leave word at the hotel for my letters and telegrams to be sent to No. 11, between the hours of 9 a. m. and 3 p. m. You will open telegrams and letters from the lake and write me, and send letters No. 22 Pine street, N. Y. Telegraph me at the same place. I may draw on you before the 15th for enough money to pay for 1,500 shares T. L. I have only in addition to the 4,000 paid

for, excepting $250, only 3,000 under contract for the 15th, and the other 1,500 shares I may be under the necessity of paying down for.

Truly yours, CHAS. H. PALMER.

Sell for me 600 Iroquois if you can.

NEW YORK, *April 9th*, 1867.

E. T. LORING, Esq.

DEAR SIR: This morning I received no letters from Boston. There is nothing new here. I find it difficult to get much more T. L. stock. We have paid for 4,000 shares. We have contracted 3,000 shares and have a prospect of getting another 1,000 shares.

The 3,000 are to be paid for on the 15th; this is besides what Hall has bought, 4,400 shares. I do not think I shall be detained here long.

Truly yours, C. H. PALMER.

NEW YORK, *April 11th*, 1867.

E. T. LORING, Esq.

DEAR SIR: I have drawn on you for $4,500 at sight in favor of A. H. Sibley. This will be probably presented to you to-morrow, and be accepted by you, and paid on the 15th, unless you 252 prefer to pay it on presentation. This is for 3,000 shares T. L., bought on contract. Col. Sibley will, on Monday, pay the parties here and take the stock. Col. Sibley is a very fine man. A. H. Sibley is away in Detroit.

I have your letter of yesterday. I am thinking that Lantern is pretty sure, and I learn from Foster that Kearsarge is likely to prove good.

Yours truly, C. H. PALMER.

We have now 7,000 T. L. and Hall and Sibley 4,400. I want to buy 1,500 more, and at least 1,600 more, 1,000 of it being for E. D.

NEW YORK, *April 11th*, 1867.

E. T. LORING, Esq.

DEAR SIR: I do not believe I shall be home this week. I think I shall get nearly all of T. L. stock. I then design to assess it to pay for the south half. In this way it will be necessary to get all we can of T. L. As this will take the south half, T. L. becomes the most important, as it will swallow up the other. I write to Bigelow. I have some suspicion of Edwards.

Truly yours, C. H. PALMER.

NEW YORK, *April 12th*, 1867.

E. T. LORING, Esq.

DEAR SIR: I have your letter with enclosures. I send draft on the N. E. National Bank for $2,900, payable to your order. I am working for T. L. stock as hard as possible. I think I shall get

two thousand or three thousand more. I do not think I shall be back this week, but likely early next week.

Truly yours, CHAS. H. PALMER.

NEW YORK, *April 16th*, 1867.

E. T. LORING, Esq.

DEAR SIR: I have your letter of yesterday. I did not know
253 that I wrote about any new cong., but I wrote about a new amygdaloid belt, said to be very rich, and which runs through section 6.

So far as we know, when you find in a region a wery rich vein, you will find also others. This must be expected. I want to buy 1,500 more T. L. for ourselves and 1,600 for others. I think I shall get it, and I do not believe that I shall be back on Thursday unless there is something specially to call me back.

Truly yours, C. H. PALMER.

NEW YORK, *April 19th*, 1867.

E. T. LORING, Esq.

DEAR SIR: I have your letter this morning. I have seen Martin & Smith, but they have not yet made up their minds in regard to our claim. I have drawn on you to-day in favor of Sibley for $300. This finishes paying for 12-20 of s. half of 35 & 36, and 7-20 of n. half. There are 4,000 shares more of T. L. that I expect to get—not more than 1,500 of it for ourselves.

I think Frue's letter indicates pretty strongly that he has Lantern cornered, as he says.

I do not know when I shall be back. I shall need to be here on the 25th to attend T. L., in order to move it over to Boston and elect directors. There is nothing new. I shall write to Campbell.

Truly yours, CHAS. H. PALMER.

NEW YORK, *April 30th*, 1867.

E. T. LORING, Esq.

DEAR SIR: I have your letter this morning with enclosures. I am hoping to hear from Frue, and in case things are favorable I shall buy 3,000 or 4,000 more T. L. Grout is expected here now, and I shall hear what he has to say. I do not know that there is anything for me to do in Boston. I can go up the lake when you do. I shall be back this week, unless something new prevents.

Yours truly, CHAS. H. PALMER.

254 Garretson expects to be here on Wednesday evening. He has sold a house here for $25,000, and it has required him to be here as he had some doubts in regard to the parties paying him. He cannot come to Boston, though if he had finished his business Monday, as he expected, he would have gone over last night.

PONTIAC, *Jan.* 21*st*, 1868.

E. T. LORING, ESQ.

DEAR SIR: I have your letters of the 3d and 8th. I have been absent from home; I have letters from Frue to the 10th, and from Henry to the 12th. They are slower in getting to fall work than I had expected. They have not enough water, or rather the pump does not now furnish them enough, and in snow-storms they cannot get down rock sufficient. From all I can learn I believe we may calculate upon two per cent. I was satisfied before I left that more washing machinery was required. Until that is supplied there will be much waste. I have written to Sibley again to transfer to you 6,000 of T. L. stock; I have 1,000 in my name now. I think he will do it; if not, I must come down and see to it.

I shall not pay too much for ¼ of sec. 5. I am working at this all the time; have the deed of ¾, and have redeemed at Lansing all that can be redeemed there. On the ¾ bought I have only to get up Sheldon and Edwards' tax title to have this part clear; then I shall go at the quarter which must be sold by order of the probate court.

The vein we are after is a very rich one, and will make a noise in the world. But at this time it is no use to move it even if we had all the land, but as it is we must certainly keep dark until this land is worked out.

The times are fearful for copper interests, but all things have a turn; it will be better bye and bye. I have faith yet.

The last thing I did before leaving the lake was to make a contract with Edwards for the land west of S. P. I did this in my own name only, as I had no right to do otherwise. Frue was agreeed that I should do this. I did it on the idea that the S. P. must have all the 600 feet, as S. P. is now using all of it and must con-
255 tinue to do so. S. P. needs 200 feet more west, and it is worth to S. P. $5,000 on account of the location of the dock and mill, which needs this extension west. The wagon road and the train road make this land the most desirable to us. We were afraid to let this land slip, if we could get it. I do not know that Edwards will get a title to the land; if he does we ought to have it. If we get it I would sell S. P. the 300 of the Adams front and 200 of this, say for $7,500, and then sell to the Adams 600 feet west of S. P. at a price that shall be agreed upon. This will leave about 520 feet of front undisposed of. These are only ideas. I have only one idea about this matter, and that is to have you do with it as you prefer. If anything can be made out of it jointly, you will share in it. I do not want to come East unless there is a great necessity for it.

Truly yours, CHAS. H. PALMER.

Delays in stamps; usual delays and troubles which we always see and experience must cause doubt. I feel very confident that regular average work and good watching are now certain to give us two per cent.

Q. State whether the five drafts I now show you were drafts drawn upon you by Mr. Palmer, and by you paid?

A. Yes, sir.

It is admitted that the following drafts were drawn by Mr. Palmer upon Mr. Loring, in connection with this Torch Lake purchase.

A draft of Feb. 14th, 1867, for $3,200; a draft of Feb. 27th, for $5,000; a draft of Feb. 28th, for $6,250; a draft of April 11th, for $4,500; a draft of April 19th, for $300; total, $19,250; all payable to the order of A. H. Sibley, and the witness says in relation to them that he paid each and all of said drafts.

Mr. WALKER: Another exhibit is now presented to the witness, being a transfer from Sibley to the defendant Loring. Does this cover the whole?

A. It covers all of the Penn purchase—all except Torch Lake.

256 Mr. WALKER: Being a declaration of trust upon the part of Mr. Sibley to Mr. Loring, that he hold this property and will convey it. It is dated 22d day of May, 1867, and is recorded in the register's office at Houghton. No acknowledgment.

Paper here referred to is offered in evidence, and marked Exhibit 39, of which the following is a copy:

To all persons to whom these presents shall come. I, Alexander H. Sibley, of the city, county, and State of New York, send greeting:

Whereas William Brenton Green and Eliza Harriet, his wife, of said New York, conveyed to me by deeds dated March 15th and April 22d, eighteen hundred and sixty-seven, twelve (12) twentieths of the following lands, to wit: Of the south halves of sections thirty-five and thirty-six, (35) and (36,) town fifty-six (56) north, range thirty-three (33) west, in the county of Houghton and State of Michigan, as by reference to said deeds will more fully appear. Now, I do hereby declare that I hold twelve (12) twentieths of said property in trust for the benefit of Elisha T. Loring, of Dorchester, in the county of Norfolk and Commonwealth of Massachusetts, merchant, and I do hereby, for myself, my heirs, executors, administrators, and assigns, covenant and agree to and with said Loring, his heirs, executors, administrators, and assigns, that I will convey said twelve-twentieths (12-20) to such person or persons, company or body corporate as said Loring shall direct in writing, upon receiving payment of all taxes and expenses which I have paid out on account of the same; and will pay over and distribute the money to him or them, or such persons as he shall direct, and will meanwhile take charge of said twelve (12) twentieths, and do in and about the same all those matters and things necessary for the protection thereof, which I should do if the same belonged to me.

257 Witness my hand and seal, this twenty-second day of May, A. D. eighteen hundred and sixty-seven.

A. H. SIBLEY, *Trustee.* [SEAL.]

Executed and delivered in presence of—
A. S. KELLOGG,
CHAS. H. PALMER.

This document consists of a sheet of paper, upon the second page of which is the following memorandum in ink:

| | |
|---|---|
| Peleg Hall | 1 |
| Chas. L. Anthony | 1 |
| Tully D. Bowen | 1 |
| Johnson & Lazarus | 4 |
| Edwin Hoyt | 1 |

Just below these names is a pencil memorandum—"$3,485.43."

Q. State whether this same property was consolidated with the Torch Lake property?

A. Yes, sir; I might say bought with a view of consolidating that property.

Q. Look at the exhibit I now show you and see what that is? Will you state in whose handwriting are the papers attached to Exhibit 39?

A. My own.

Q. What is the purpose of the paper dated March 14th, 1868, and how came it to be made; that is, before the date of the trust?

A. Well, that refers to Torch Lake stock. At the time Mr. Palmer purchased this stock he had notified me who he designed a portion of it for. He designed this stock for William B. Frue to the extent of 2,600 shares, E. D. Brigham 1,000 shares, and he intended to dispose to me 2,000, and appropriate to himself 1,000 shares. He bought 7,700 shares. The 400 shares which would be deficient he subsequently sold to a gentleman here in Boston. That memorandum was made in conformity of Mr. Palmer's instructions.

Mr. SEAGER: Instructions to you how, verbally?

258 A. Verbally on an envelope. I made a note here "to be held as collateral until paid for. E. T. L."

Mr. WALKER: When was that made with reference to the date—whether at that time?

A. It was made at the date.

Q. What can you say about Palmer's knowing of that memorandum and recognizing it, if anything? What is your recollection about that?

A. I can't say positively that I exhibited it to him, but it was made out according to his instructions. I should not have known for whom he made the purchase otherwise.

The papers annexed to Exhibit 39 are offered in evidence, and marked 40 and 41. The following is a copy of Exhibit 40:

*Memorandum of Torch Lake Stock.*

The 6,600 shares of the within stock are to be distributed as follows, by order of C. H. Palmer:

| | | |
|---|---|---|
| William B. Frue | 2,600 | shares. |
| E. D. Brigham | 1,000 | " |
| Paid cost, E. T. Loring | 2,000 | " |
| C. H. Palmer | 1,000 | " |
| | 6,600 | shares. |

BOSTON, *March 14th*, 1868.

E. T. LORING.

Until paid for to be held as collateral. E. T. L.

The following is a copy of Exhibit 41:

MAY *24th*, 1867.

The following persons are interested in the land described in this document, to whom I have given guarantees that the stock shall be forthcoming on the organization of the company. To say: 1,000 shares to E. D. Brigham; 1,000 shares to H. Bigelow; 1,000 shares to J. H. Cotton; 500 shares to J. W. Clarke; and E. T. Loring, 2,000 shares. The funds paid on account of this stock has been placed to the credit of C. H. Palmer, in account.

E. T. LORING.

259 There is endorsed on the back of Exhibit 41 the following, viz:

MARCH *14th*.

Of the balance, 3,000 shares to William B. Frue, and 3,500 shares to C. H. Palmer. The 6,500 shares are pledged as collateral for any indebtedness of said Palmer to E. T. Loring.

E. T. LORING.

The WITNESS: They were made at the time and conformed to Mr. Palmer's instructions.

Q. Please look at Exhibit 41 and state when it was made, and how it came to be made, dated May 24th, 1867?

A. This is a memorandum made in my handwriting on the date which is specified, from instructions from Mr. Palmer, showing to whom he had conveyed an interest in the land described. Do you wish me to read it?

Q. No, sir.

A. Then subsequently it was attached to this; there is the time in the corner, and there is a part of the word May. It was detached when it was sent for record, and you can see where it was torn off. As further evidence, I will read what I have here, "March 14th." When Mr. Palmer gave me that memorandum which you introduced in the same date, then he says to me, I know it is because it

is endorsed on the same paper: "I have sold a balance of Penn." That document applies to 12–20 of Penn. Then he advised me March 10th, he had allotted to William B. Frue 3,000 shares, and to C. H. Palmer, 3,500 shares. "The 6,500 shares is pledged as collateral for any indebtedness of said Palmer to E. T. Loring." I became responsible to those parties for the amount. "The following persons are interested in the land described in these documents to whom I have given guarantees that the stock shall be forthcoming on the organization of the company, to say:

1,000 shares to E. D. Brigham, 1,000 shares to H. Bigelow, 1,000 shares to J. H. Cotton, 500 shares to J. W. Clarke, and E. T. Loring, 2,000 shares. The funds paid on account this stock has been placed to the credit of C. H. Palmer.

E. T. LORING.

260 Q. When was that endorsement upon the back of Exhibit 41 made?

A. At the same time I made that.

Q. At the same time you made Exhibit 40?

A. Yes, sir.

Q. March 14th, 1868?

A. Yes, sir.

Q. Was Torch Lake then an incorporated company?

A. Yes, sir.

Q. State whether that endorsement upon Exhibit 42 is in the handwriting of Mr. Palmer?

A. It is.

Q. How came that certificate in your possession?

A. That certificate was mailed to me by Mr. Palmer, I should judge early in October. Nothing important that I know what time it was. Early in October, 1870.

Paper referred to is here marked Exhibit 42.

The following is a copy of Exhibit 42:

*Incorporated under the Laws of the State of Michigan.*

No. 66.] [1000 Shares.

TORCH LAKE MINING COMPANY.

20,000 Shares.] Capital, $500,000. [Shares, $25 each.

[25c. stamp.]

This is to certify, that Charles H. Palmer is entitled to one thousand shares in the capital stock of the Torch Lake Mining Company, transferrable on the books of the company, in person or by attorney, on surrender of this certificate.

NEW YORK, *April 15th*, 1867.

JAMES A. WEBB, *Sec'y.*

GEO. POMEROY, *Pres't.*

On the face is the following endorsement: "Surrendered. New certificate issued to W. A. Kingsbury, agent. Entered on transfer book No. 39."

The following endorsements are on the back: "For value received I hereby sell, transfer and assign to W. S. Kingsbury,
261 agent, the shares of stock within mentioned, and authorize to make the necessary transfer on the books of the company. Witness my hand and seal this day of 186 .

"CHARLES H. PALMER.

"Witnessed by
"R. F. CULBERT. [25c. stamp.]"

"The within described stock was sold by us by order of E. T. Loring, at public auction Sept. 25th, 1870.

"HENSHAW BROS."

Mr. SEAGER. There was a letter it seems accompanying this certificate. Have you the letter?

A. I may have, I don't know. Why I state so positively that I had an interview with Mr. Palmer in October, was from the fact that when I was there at that interview, I called Mr. Palmer's attention to the fact of holding this 1,000 in his name, and consequently I could not transfer it as was contemplated when this sale of collaterals was made. So here at the bottom you find this endorsement: "The within described stock was sold by us by order of E. T. Loring, Sept. 28th, 1870." It was when that subject came up that I notified Mr. Palmer he could have all the collaterials on payment.

Q. You mean you did in the correspondence?

A. I did verbally.

Mr. WALKER. State whether you ever received anything from Mr. Palmer on account of the money you thus paid upon his drafts, for Torch Lake or Penn?

A. No, sir; at the time the notes were discounted a portion of those funds may have been used.

Q. I mean directly?

A. None whatever.

Q. You say that of some of the notes discounted the proceeds may have been used?

A. I can't say.

Q. In whose name did all the stock in which Mr. Palmer and Mr. Frue became interested stand, with the exception of those thousand shares?

A. In my name, as trustee.

Q. What has become of that stock?

262 A. It was sold at auction, and taken by myself. I hold it myself. I annulled the sale, and took it all into my possession.

Q. And where is it now?

A. In my possession, subject to the order of Messrs Palmer and Frue.

Q. On what?

A. On settlement of the account.

Q. Was there any distinct understanding between Mr. Palmer and yourself as to to your holding this stock?

A. Nothing further than that he purchased it and drew a draft on me, with the understanding that I was to hold it as collateral security.

Q. That is, to the extent of his and Frue's interest?

A. Yes, sir; I could not hold the other, because they paid for it.

Q. State whether Mr. Frue in any way had recognized Mr. Palmer's right to deal as to Torch Lake stock for him?

Mr. SEAGER. What bearing has that?

Mr. WALKER. It bears upon the question of our making a claim upon Mr. Palmer for the Frue stock. We claim that we supposed Frue was to be interested in it.

Mr. SEAGER. We object to that evidence.

The WITNESS. I will state this much, Mr. Frue has acknowledged that this stock was bought by me, and was advised by the accounts which were remitted to Mr. Palmer that I held that stock as collateral.

Q. What do you mean by his acknowledgment?

A. I mean Mr. Frue's own testimony in the trial of 1874. He admitted that he had seen Mr. Palmer's account of the purchase of this Torch Lake stock, and he was well aware that I held it all as collateral.

Q. What do you know about Captain Frue's repudiating, now, all interest in that stock?

A. Nothing further than his evidence on the trial, and his accounts.

Objected to.

263 The WITNESS. In his accounts, as he presented them, to me, is probably the more correct answer.

Mr. SEAGER. Have you those accounts?

A. Yes, sir; a copy of them.

Mr. WALKER. Will you state the nature of your claim under Nos. 96, 97, 98, 99?

A. The first item, 96, is the cost of 2,600 shares of Torch Lake stock; that is the stock allotted by Mr. Palmer to Captain Frue, which Frue has since repudiated; 3,000 in 36 and 37. Then cash paid assessments on 2,600 shares, and the other is the last assessment of 20 cents, $520.

Q. Who paid those assessments on the stocks which you claim were allotted to Frue and Palmer?

A. I paid them, and held the stock.

Mr. POST. Has that money actually been paid to the Company?

A. It has been used by the officers of the company to pay the debts of the company. By-the-by I ought to explain: The last assessment levied on the stock of 20 cents a share became due April 15th, 1879, and was for the express purpose of paying up the indebtednes of the company.

Mr. POST. To whom, to yourself?

A. Yes, sir; that assessment on me and all friends I have paid, giving the company credit for it.

Mr. WALKER. Including the stock you held in trust for Palmer and Frue?

A. Yes, sir.

Q. So you have given the compauy credit?

A. Yes, sir.

Q. Please explain charges 93 and 94?

A. Under the same circumstances, precisely. Those assessments I paid on the stock originally alloted to Mr. Palmer.

Q. By whom was this assessment voted?

A. By the Board of Directors.

Q. And for what was this indebtedness?

A. For taxes. Why, taxes up there, you ask me——

Mr. POST. We object to proving a vote of the Board of Directors by the oral testimony of this witness.

264 Q. Where are the records?

A. Mr. Burr had charge of them.

Mr. WALKER. We propose to produce them. The company have had the benefit of all those assessments you have charged there?

A. Yes, sir. There are a number of stockholders who did not pay.

Q. Whether the amount charged as paid is the exact amount you have paid for this proportion of stock?

A. Precisely.

Q. That stock you say is still in your hands?

A. In the hands of myself and friends, under my control. I have the certificates.

Q. Standing in whose name?

A. In the names of several of my friends.

Q. But it is under your control, and ready to be delivered upon a settlement of the account?

A. Precisely so, every share.

Q. Did Mr. Sibley have any authority from you to act in the matter, or purchase any of this Torch Lake stock?

A. None, whatever. On the contrary, I protested against the purchase of this Torch Lake property until the balance was paid up.

Q. No. 44 is money paid for renewal. Will you look at those notes and see whether those are the notes for which you charge the renewal?

A. Yes, sir. There are memorandums in my own handwriting, besides endorsements.

Q. Was that amount paid for renewal?

A. Yes, sir.

The notes referred to are here marked Exhibits 43 and 44, and offered in evidence.

Exhibit 43 is a note for $5,000, dated at Boston, Feb. 12th, 1867, payable six months after date to the order of Elisha T. Loring, and signed by Chas. H. Palmer. On the lower margin of the note is the following: "Notify E. T. Loring, 11 Change avenue, Bos-
265 ton." The note upon its back bears the endorsement of Elisha T. Loring, and of Amos Otis, cashier.

Exhibit 44 is a note dated at Boston, Feb. 25th, 1867, for six months, payable to the order of Elisha T. Loring, for $5,000, and signed by Charles H. Palmer. Across the face of the note is the following pencil memorandum: "Renewed Aug. 9." Note bears upon its back the endorsement of Elisha T. Loring, and Amos Otis, cashier.

Q. Nos. 46, 53, 88; assessments upon Adams stock?

A. All of the same character.

Q. What do you know about the amount of stock; let me ask you first, where are the records of the Adams Co.?

A. I presume the record is in New York. There were 1,420 shares held in my possession for Frue and Palmer, and assessments were paid on that.

Q. Will you state whether the papers I now show you are the receipts for the assessments charged upon the stock.

A. I know that is Mr. Burr's signature, and that they are receipts charged for assessments.

The papers referred to by the witness are offered in evidence, and marked Exhibits 45, 46, 47.

Exhibit 45 is a receipt dated Boston, November 10, 1868, and acknowledges the receipt from C. H. Palmer, by E. T. Loring, of $1,424.14, being in full for third assessment of one dollar a share upon 1,420 shares, $4.14 being for interest.

Signed, LAFAYETTE BURR,
*Treasurer.*

Exhibit 46 is a like receipt dated Boston, Dec. 17, 1867, as received from the same parties, $4,315.50, for second assessment of three dollars a share on 1,420 shares, interest being $55.50.

Signed, LAFAYETTE BURR,
*Treasurer.*

Exhibit 47 is a like receipt dated Boston, Sept. 19, 1867, as received from the same party, $2,912.90, for first assessment of two dollars a share upon 1,420 shares of stock, interest $72.90.

Signed, LAFAYETTE BURR,
*Treasurer.*

266 The above are all receipts from the Adams Mining Co.

Q. Please look at Exhibit 6, already in the case, and say whether any portion of these assessments are charged in the account of Mr. Palmer?

A. September 19th, assessments paid, $2,912.90 and $4,315.50.

Q. State whether those are two of the same items covered by the receipts?

A. Yes, sir.

Q. And I understand you to say that copies of this account have been furnished to Mr. Palmer long ago.

A. Yes, sir; long ago.

## EXHIBIT NO. 48.

### ELISHA T. LORING, IN ACCOUNT WITH CHAS. H. PALMER.

| 1866. | | DR. | | |
|---|---|---|---|---|
| Oct. 19. | To cash received from H. Bigelow | | $10,000 00 | |
| Nov. 3. | " " " | | 2,000 00 | |
| 17. | " sundry drafts from W. B. Frue | | 10,970 00 | |
| Dec. 10. | " " " | | 2,675 00 | |
| 1867. | | | | |
| Jan. 7. | " cash | | 6,000 00 | |
| 9. | " " | | 4,000 00 | |
| 9. | " " received from H. Bigelow | | 8,000 00 | |
| 20. | " sundry drafts from W. B. Frue | | 18,500 00 | |
| | | | | $62,145 00 |
| Feb. 4. | " sundry drafts from W. B. Frue | | 14,480 94 | |
| 13. | " " " | | 9,954 08 | |
| 23. | " " " | | 1,490 93 | |
| Mar. 23. | " cash on H. B.'s account, Secs. 35 and 36 | | 1,259 16 | |
| 23. | " " on acc't for lands | | 2,740 84 | |
| 23. | " " rec'd from Ossipee Mining Co. for land with interest | | 25,429 17 | |
| | | | | 55,355 12 |
| 23. | " cash rec'd from New York on acc't C. H. Palmer, P. Hall | $78 52 | | |
| 23. | " cash rec'd from New York on acc't C. H. Palmer, Anthony & Hall | 1,183 08 | | |
| 23. | " cash rec'd from New York on account C. H. Palmer, Anthony & Hall | 1,190 20 | | |
| 23. | " cash rec'd from New York on account C. H. Palmer, A. H. Sibley | 2,500 00 | | |
| | | | 4,951 80 | |
| 23. | " cash of Jos. W. Clark on account of his interest in Secs. 35 and 36 | | 629 69 | |
| April 1. | " cash, account W. B. F., Houghton Bank, payable in New York | | 1,500 00 | |
| 267 | | | | |
| 3. | " cash received from Jos. H. Cotton for 500 shs. Kearsarge, Iroquois, and int'st with assessment | | 2,812 50 | |
| 3. | " cash received from A. H. Sibley note of $2,340.12 | | 2,328 33 | |
| 3. | " cash received from draft on Ossipee Mining Co., order of W. B. Frue | | 4,641 28 | |
| 3. | " cash received from draft on South Pewabic Copper Co., order of W. B. Frue | | 500 00 | |
| 3. | " cash received from draft on Adams Mining Co., order of W. B. Frue | | 500 00 | |
| | | | | 17,863 60 |

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| 1867. | | | | |
| April | 8. | To cash received from H. Bigelow acc't of stock of Henry D'Aligny | $253 88 | |
| | 3. | " cash received from draft on Kearsarge Mining Co., order of W. B. Frue | 3,796 68 | |
| | 3. | " cash received from draft on So. Pewabic Mining Co., order of W. B. Frue | 1,250 00 | |
| | 3. | " cash rec'd from draft on Adams Mining Co., order of W. B. Frue | 1,250 00 | |
| | 11. | " cash due on 1,800 shs. Kearsarge stock, at $\frac{3}{4}$ per share, with interest | 1,320 00 | |
| | 11. | " cash due on 1,800 shares Kearsarge stock assessments at 50c. per share | 900 00 | |
| | 11. | " cash due on 2,250 shs. Ossipee stock at $1\frac{1}{3}$ per share, with interest | 3,120 00 | |
| | 11. | " cash due on 2,250 shs. Ossipee stock assessment at $2 per share | 4,500 00 | |
| | | | | $16,390 56 |
| | 11. | " cash due on 2,000 shs. Secs. 35 and 36, or $\frac{1}{10}$ interest in the property | 2,523 75 | |
| | 11. | " cash due on 750 shs. Ossipee stock, acc't E. D. Brigham, with interest | 1,040 00 | |
| | 11. | " cash due on 750 shs. Ossipee stock assessment, acc't E. D. Brigham, with in't | 1,500 00 | |
| | 11. | " cash due on 750 shs. Kearsarge stock assessment, acc't E. D. Brigham, with in't at 50c. | 375 00 | |
| | 11. | " cash due on 1,000 shs. Secs. 35 and 36 stock assessment, acc't E. D. Brigham, at $1\frac{1}{4}$ | 1,261 87 | |
| Mar. | 29. | " cash due from note of C. C. Douglass, $2,340.12 | 2,326 38 | |
| | 29. | " cash received from Jas. H. Cotton, acc't of his interest in Secs. 35 and 36 | 1,257 92 | |
| | | | | 10,284 92 |
| Apr. | 13. | " cash, amount of draft favor of John Senter, N. Y. | 1,400 00 | |
| | 13. | " cash, amount of draft favor of W. B. Frue | 1,500 00 | |
| 268 | | | | |
| May | 1. | To 2,400 shs. Iroquois stock, at 50c., on acc't of land account E. T. L. | 1,200 00 | |
| June | 25. | " draft on Dupee, Beck & Sayles, acc't of S. Mandlebaum | 820 00 | |
| | 27. | " draft on Hecla Mining Co | 150 00 | |
| | 27. | " " Hancock Mining Co | 20 00 | |
| | 27. | " " Huron Mining Co | 641 98 | |
| | 27. | " " Franklin Mining Co | 777 94 | |
| | | | | 6,509 92 |
| July | 12. | " " Duncan & Sherman, received from John Senter | 360 83 | |
| | 12. | " draft on Dupee, Beck & Sayles, rec'd from S. Mandlebaum | 485 05 | |
| | 12. | " draft on S. P. Brady, $443 33, expense collecting $1 11 | 442 22 | |
| Aug. | 6. | " amount rec'd from A. H. Sibley on 1,470 shs. Ossipee, with interest to date | 7,898 39 | |
| Sept. | 1. | " amount received from A. H. Sibley, $3,982 70, interest $110 02 (sales F. stock) | 4,092 72 | |
| | 1. | " amount received from S. Mandlebaum, his note. | 1,000 00 | |
| | 1. | " amount received for 75 shares Ossipee stock allotted Wood | 374 11 | |
| | | Balance | 11,105 81 | |
| | | | | 25,259 13 |
| | | | | $193,808 25 |

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| 1866. | | | | | |
| Oct. | 19. | By cash paid H. Bigelow | $20,000 00 | | |
| | 19. | " drafts favor J. N. Dennison | 1,000 00 | | |
| Nov. | 3. | " " " " | 7,000 00 | | |
| | 3. | " expenses to Pittsburg | 50 00 | | |
| | 17. | " sundry telegrams this day | 26 97 | | |
| Dec. | 10. | " cash on acc't of lands bought in N. Y. | 3,356 21 | | |
| | 28. | " cash paid Chas. H. Palmer | 3,000 00 | | |
| | | | | | $34,433 18 |
| | 28. | " expense collecting draft on Chicago | 1 87 | | |
| | 28. | " " " " " | 1 16 | | |
| | 31. | " sundry telegrams to date | 26 23 | | |
| | 31. | " express of mineral specimens | 1 65 | | |
| | 31. | " expense copying deed | 5 00 | | |
| 1867. | | | | | |
| Jan. | 9. | " cash paid on account of lands, $32,000; interest, $392 | 32,392 00 | | |
| | 12. | " express on specimens | 4 25 | | |
| | 12. | " telegraphing | 8 91 | | |
| | 25. | " " sundry times to date | 16 08 | | |
| | | | | | 32,457 15 |

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|---|---|---|---|---|---|
| Feb. | 15. | To draft favor A. H. Sibley | 3,200 00 | | |
| | 28. | " " " " | 5,000 00 | | |
| Mar. | 2. | " " " " | 6,250 00 | | |
| | 7. | " cash paid for telegraphing | 8 04 | | |
| | 23. | " amount paid J. N. Dennison on account land | 40,000 00 | | |
| | 23. | " am't paid assessment on 2,000 shs. Ossipee. at $3 50, with interest to date | 7,060 67 | | |
| | 23. | " am't paid assessments on 501 shs. Ossipee, at $3 50, account W. B. Frue | 1,768 69 | | |
| | 23. | " am't paid assessment on 13,424 shs. Ossipee, at $2 00 per share, account C. H. P. and others | 26,848 00 | | |
| | | | | | 90,135 40 |
| | 23. | " am't paid assessment on 4,000 shs. Ossipee, at $2 00 per share, acc't H. B | 8,000 00 | | |
| | 23. | " am't paid assessment on 75 shs. Ossipee, at $2 00 per share, acc't H. D. A | 150 00 | | |
| | 23. | " am't paid H. Bigelow to bal. his acc't with C. H. Palmer | 96 99 | | |
| Ap'l | 10. | " am't paid assessment on 5,000 shs. Kearsarge stock, at $2 00 with interest | 10,116 66 | | |
| | 10. | " am't paid assessment on 2,211 shs. Kearsarge stock, at $2 with interest, acc't of W. B. F. | 4,473 59 | | |
| | 10. | " am't paid assessment on 750 shs. Kearsarge stock, at $2 00 with interest, account of C. H. P | 1,517 50 | | |
| | 10. | " am't paid assessment on 500 shares Kearsarge stock, at $2 00 with interest, account of C. H. P. | 1,011 61 | | |
| | 10. | " am't paid assessment on 1,688 shares Kearsarge stock, at 50c., account H. B | 844 00 | | |
| | | | | | 26,210 35 |
| | 10. | " am't paid assessment on 2,239 shares Kearsarge stock, account of C. H. P., W. B. Frue and others | 1,119 50 | | |
| | 15. | " am't paid draft favor A. H. Sibley | 4,500 00 | | |
| | 22. | " " " " " | 300 00 | | |
| | 22. | " cash paid sundry despatches—Mich | 16 10 | | |

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| 1867. | | | | |
| June 25. | " | cash assessment of $1 50 on 375 shares Ossipee stock, S. Mandlebaum | $562 50 | |
| 25. | " | cash interest on assessment, $562 50, from Feb. 1 to date | 18 59 | |
| 28. | " | cash assessment on 250 shares Ossipee stock, Peleg Hall, at $1 50, omitted when issued | 375 00 | |
| 28. | " | cash interest on $375 from Feb. 1 to date | 9 16 | |
| | | | | $6,895 85 |
| 270 | | | | |
| July 1. | | To error to his credit, assessment on 1,800 shares Kearsarge stock (equal to cash April 11) | 900 00 | |
| 1. | " | paid assessment on 250 shares Ossipee stock, sold P. Hall | 384 16 | |
| Aug. 6. | " | paid assessment on 1,470 shares Ossipee stock, assigned to A. H. Sibley | 2,275 65 | |
| Sept. 1. | " | paid assessment on 75 shares Ossipee stock, assigned to Wood, with interest | 116 51 | |
| | | | | 3,676 32 |
| | | | | $193,808 25 |
| | | Balance due September 1st, 1867 | | $11,105 81 |
| 1867. | | | | |
| Dec. 31. | | By balance interest due Sept. 1 | | 2,030 72 |
| 31. | " | 4 mos. interest due Dec. 31, 1867 | | 306 52 |
| | | | | $13,442 05 |

Q. Did he at time such account was furnished make any objection to those charges?

A. No, sir.

Q. When did he first raise any objection?

A. After the company was insolvent.

Q. When was that?

A. It must have been about 1870, I guess.

Q. That is the first time that he made any claim?

A. The first time that he made any dispute about the claim for assessments, until he was fully aware that the company must fail; he did object then.

Q. I now call your attention to your credit account No. 44, where you have credited Mr. Palmer with the sale of 1,420 shares. State when that was sold and what you got for it.

A. I can't recollect the exact date when it was sold, except I refer to the paper that I have here.

Q. Was it sold at the date you have it?

A. No doubt it was.

Q. July 16th, 1872; is that the time it was sold?

A. Yes, sir.

Q. And what was it sold for?

A. $1.66⅔.

271 Q. To whom?

A. To a gentleman by the name of Stanton, in New York.

Q. Was that a genuine sale—have you had any interest in the stock since that time?

A. None whatever. I had a few shares in South Pewabic—

Q. Never mind that. Was that all that could be sold for at that time?

A. Yes, sir.

Q. Was that all it could be sold for?

A. All it could be sold for. We thought we were very fortunate. Had it been sold to parties who did not have South Pewabic, they would not have got one dollar a share for it.

The examination was here adjourned until 10 a. m. to-morrow.

*Elisha T. Loring recalled, and examination continued.*

Mr. WALKER. Look at No. 57 of your debtor account, and state whether the exhibits now shown you, two notes of $5,000 each, were the notes which were renewed at that time?

A. They are; and my note made at the bottom and endorsement. The others were, and at the time were renewed with other notes.

The notes referred to by the witness are marked Exhibits 49 and 50. Exhibit 49 being a note dated at Boston, July 12th, 1867, for $5,000, payable six months after date to the order of Elisha T. Loring, and signed Chas. H. Palmer, "due February 12–15, at No. 11 Change ave.," having a pencil memorandum on its face "renewed Feb'y 11." Upon the back is the following endorsement: "Pay to the cashier of the First National Bank, Yarmouth, on the 12–15 Feb'y, 1868. Elisha T. Loring." "Pay E. A. Presbrey, Esq., cashier, or order. Amos Otis, cashier."

Exhibit 50 is a note dated Boston, July 25, 1867, for $5,000, payable six months after date to the order of Elisha T. Loring, due Feb'y 25–28, signed Chas. H. Palmer. Pencil memorandum on face, "renewed Feb'y 11." The following endorsement on the back: "Pay to the cashier of the First Natl' Bk., Yarmouth, on the 25–28 Feb'y, 1868. Elisha T. Loring." "Pay T. A. Presbrey. Amos Otis, cashier."

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Q. Look now at No. 60 of your account and say whether the Exhibit I now show you is the note that was then taken up and renewed?

A. It is; having a pencil memorandum and my endorsement.

Paper referred to is marked Exhibit 51, and offered in evidence, being four months' note for $5,000, dated Boston, Nov. 12, 1867, to the order of Loring, signed Chas. H. Palmer, with pencil memorandum on face: "Renewed Feb'y 29," endorsed on back, "Elisha T. Loring."

Q. Look at No. 62 of your account and see whether the Exhibit I now show you was the note that was then taken up by renewal?

A. Yes, sir; having my memorandum in pencil and endorsement.

Paper offered in evidence marked Exhibit 52, being a $5,000 note, dated Boston, Nov. 5, 1867, at four months, to order of Elisha T. Loring, signed Chas H. Palmer. Pencil memorandum on face: "Renewed Mar. 7." Endorsed, "Elisha T. Loring."

Q. Look at No. 63, and see whether the note I now show you is not the note that was paid and there charged?
A. It is, sir.

Paper offered in evidence, marked Exhibit 53, being a note of $5,000 for four months, to the order of Elisha T. Loring, dated Boston, Nov. 16, 1867, and signed Chas. H. Palmer. Endorsement on face: "Send notice to E. T. Loring, 31 Kilby street, Boston." On back, endorsement of Elisha T. Loring.

Q. Look at No. 66 of your account and see whether the note I now show you was the one there charged?
A. It is, having my memorandum at the bottom and endorsement.

Marked Exhibit 54. Being a note for $5,000 at four months, to the order of Elisha T. Loring, dated Boston, December
273 16, 1867, signed Chas. H. Palmer. Mem. on face: "Notify No. 11 Change Ave." Endorsed, "Elisha T. Loring."

Q. Look at No. 67 of your account and the note I now show you, and say whether the note is the one there charged?
A. It is, having my memorandum and endorsement.

Note marked Exhibit 55, and offered in evidence. Being a note for $5,000 at four months, to the order of Elisha T. Loring, dated Boston, December 23, 1867, signed Chas. H. Palmer. Mem. on face. "Notify No. 31 Kilby street." Endorsed, "Elisha T. Loring."

Q. Look at No. 71 of your accout and the Exhibit I now show you and say whether that note is the one there charged?
A. It is, with my memorandum.

Note offered in evidence, and marked 56, being a note for $5,000 at four months, to the order of Elisha T. Loring, dated Boston, April 11, 1868, signer Chas. H. Palmer. Mem. on face. "Notify 31 Kilby street." Endorsed, "Elisha T. Loring."

Q. Look at No. 72, and the note now shown you, and say whether it is the one there charged and paid?
Q. [A.] It is so, having my endorsement.

Note offered in evidence, and marked Exhibit 57, being a seven months' note for $5,000, to the order of Elisha T. Loring, dated Boston, January 12, 1868, signed Chas. H. Palmer. Mem. on face. "P. N. P., August 15, 1868, 2 C. F." Endorsed, "Elisha T. Loring, and Amos Otis, cashier."

Q. Look at No. 73 of your account, and the Exhibit now shown you, and see whether that is the note there charged?

A. It is, being my memorandum and my endorsement.

Note marked Exhibit 58, and offered in evidence, being a note for four months' for $5,000, order of Elisha T. Loring, dated Boston, April 20, 1868, signed Chas. H. Palmer. Mem. on face. "Notify E. T. Loring, 31 Kilby street." Endorsed, "E. T. Loring."

Q. Look at No. 74 of your account, and the Exhibit I now show you, and see whether that is the note there charged?

274 A. It is, with my endorsement.

Note marked Exhibit 59, and offered in evidence, being a seven-months' note for $5,000, order of Elisha T. Loring, dated Boston, January 25, 1868, signed Chas. H. Palmer. Endorsed Elisha T. Loring, and Amos Otis, cashier.

Q. Look at No. 75, and the exhibit now shown you, and say whether it is the one there charged?

A. It is so, having my endorsement.

Note marked Exhibit 60, offered in evidence, being a six months' note, order of E. T. Loring, $5,000, payable at any bank in Boston, dated Boston, February 29th, 1868, signed Chas. H. Palmer. Mem. on face. "Notify E. T. Loring, 31 Kilby street." Endorsed, "Elisha T. Loring, Lafayette Burr. Pay Edward Tyler, Esq., cash. or order, T. H. Miles, cashier."

Q. Look at No. 76, and the exhibit now shown you, and see whether it is the one there charged?

A. It is, having my memorandum and endorsement.

Note marked Exhibit 61, and offered in evidence, being a four months' note for $5,000, to order of Elisha T. Loring, dated Boston, April 28, 1868, signed Charles H. Palmer. Mem. on face. "Notify E. T. Loring, 31 Kilby street." Endorsed Elisha T. Loring.

Q. Look at No. 77, and the exhibit now shown you, and see whether that is the one there charged?

A. Yes, sir, having my memorandum and endorsement.

Note marked Exhibit 62, and offered in evidence, a six months' note for $5,000, order of Elisha T. Loring, dated Boston, March 10th, 1868, signed Chas. H. Palmer. Mem. on face. "Notify 31 Kilby street." Endorsed "Elisha T. Loring."

Look at the exhibit now shown you, and see whether that is the note charged as No. 79?

A. Yes, sir, having my memorandum and endorsement.

Note marked Exhibit 63, and offered in evidence, a four months' note, $5,000, to order of Elisha T. Loring, payable at North National Bank, dated Boston, August 13, 1868, signed by Palmer. Mem. on face. "Notify 31 Kilby street." Endorsed Elisha T. Loring.

275 Look at No. 80 of your account, and the exhibit I now show you, and see whether that is the note there charged?

A. Yes, sir, having my memorandum and endorsement.

Note offered in evidence, and marked Exhibit 64, being a four months' note, to the order of Elisha T. Loring, for $5,000, signed Chas. H. Palmer, and dated at Boston, Aug. 17th, 1868. Mem. on face. "Notify E. T. Loring, 31 Kilby street." Endorsed "Elisha T. Loring."

Q. Look at No. 82, and the exhibit now shown you, and see whether it is the note there charged?

A. It is, having my memorandum and endorsement.

Note offered in evidence, and marked Exhibit 65, being a four months' note for $5,000, to order of Elisha T. Loring, and dated Boston, Sept. 3, 1868, signed Chas. H. Palmer. Mem. on face. "Notify E. T. Loring, 31 Kilby street." Endorsed Elisha T. Loring.

Q. Look at No. 83 of your account and the exhibit now shown you, and state whether that is the note there charged.

A. It is.

The note marked Exhibit 66, and offered in evidence, being a four months' note for $5,000, to order of Elisha T. Loring, dated Boston, Sept. 12, 1868, and signed Chas. H. Palmer. Mem. on face in lead pencil. "Notes from Aug. 1 to Dec. 31." Endorsed "Elisha T. Loring."

Q. Look at No. 84 and the exhibit now shown you, and see whether that is the note, the renewal of which is charged in this item?

A. It is.

Note marked Exhibit 67, and offered in evidence, being a note of six months to order of Elisha T. Loring, $5,000, signed Chas. H. Palmer, dated Boston, Aug. 25, 1868, the date and amount being erased on the note. The following mem. across the face, also erased: "Notify E. T. Loring, 31 Kilby street, Boston," and having the following endorsement on the back which has been erased: "Elisha T. Loring. Pay Edw. Tyler cash. or order. Geo. H. Snow, cash."

276 Q. Look at No. 85 on your account, and at the exhibit now shown you, and say whether that is the one there charged as paid?

A. It is the one charged in my account as No. 85.

Note offered in evidence, marked Exhibit 68, being a six months' note for $5,000, signed Chas. H. Palmer, dated Boston, Aug. 18, 1868. Mem. on face: "Notify E. T. Loring, 31 Kilby street." Also pencil mem. on face: "Due Feb'y 18." Endorsed Elisha T. Loring, Amos Otis, cashier. Stamp on face: "Paid at the National Bank of Redemption of Boston."

Q. Look at No. 86 of your account and the exhibit I now show you, and see whether that is the note there charged as paid?

A. Yes, sir.

Note marked Exhibit 69, and offered in evidence, being a seven months' note to order of Elisha T. Loring for $5,000, dated Boston, July 28, 1868, signed Chas. H. Palmer. Mem. on face: "Notify E. T. Loring, 31 Kilby street, Feb'y 28, Feb'y 29, notes of '68 to Aug. 1." Stamp on note: "Paid at the National Bank of Redemption of Boston."

Q. Look at No. 89 of your account and at the exhibit I now show you, and see whether it is the note there charged as paid.

A. That is the one; having my memorandum and endorsement.

Note offered in evidence and marked Exhibit 70, being a six months' note to order of Elisha T. Loring, $5,000, payable at any bank in Boston, dated Boston, Feb. 10, 1869, signed Chas. H. Palmer. Mem. on face: "Notify E. T. Loring, 31 Kilby street." Due Aug. 10, 13, '69. Endorsed, "Elisha T. Loring and Amos Otis, cashier.

Q. Look at No. 90 on your account and see whether the exhibit I now show you is the note there charged as paid?

A. Yes, sir.

Note marked Exhibit 71 and offered in evidence, being a seven months' note to order of Elisha T. Loring, payable at any bank
277 in Boston, dated Jan. 25, 1869, signed Chas. H. Palmer. Following mems. on face: "Notify E. T. Loring, 31 Kilby street. Due Aug. 25, 28, '69." Endorsed E. T. Loring. Pay H. Hobbs, acting cashier, or order. Geo. H. Snow, cashier. Paid at Suffolk National Bank. H. G. Hunt, teller.

You have incidentally mentioned, and I will now ask you to state, whether all these notes that have been introduced in evidence were taken up and paid by you?

A. They were, sir.

Q. All of them discounted?

A. Yes, sir; no doubt of it.

Q. For what purpose were those notes executed to you by Mr. Palmer?

A. For the purpose of furnishing him with funds in his operations.

Q. How was it about their being given to you for your accommodation?

A. Not in any one instance. I might add still further that Mr. Palmer never signed a note as promisor in my favor.

Q. These, then, are in the way you have mentioned?

A. Well, yes; I mean that there were no notes discounted for me as an accommodation, having Mr. Palmer's name on it.

Q. State whether you have asked or received any aid from Mr. Palmer to raise any money on your own account, or for your own purposes?

A. I should say not from recollection, but I have an indistinct

impression that the man who managed the bank where I lived—an intimate friend of mine—that in an emergency I signed a note as promisor, and they required an endorser. It is my impression, in that bank only, Mr. Palmer may have endorsed it. I have an impression of that kind.

Q. How was it about your being, during the time covered by these notes, in the habit of endorsing for Mr. Palmer for his operations, in advance of what you owed him?

Objected to.

278 A. I think that is easily answered. Mr. Palmer, if you take into account the notes falling due at the time, was always indebted to me. For instance, at a certain date the notes discounted might exceed the amount charged; but taking into account the notes outstanding at that time endorsed by me, it overbalanced.

Q. How was it about these notes being signed in blocks and left with you to be used without any reference to Mr. Palmer's interest?

A. I have no knowledge of any transaction of that kind, I never was made acquainted with it until this time. Mr. Palmer's correspondence shows distinctly—

Q. You need not state that. The question is whether notes were signed in blocks and left with you to be used by you for your convenience?

A. None whatever; none in blocks. In fact I have no recollection of more than two being left in my hands.

Q. Where were those notes principally executed?

A. Here in Boston, nearly all. There were exceptions of course. I might say nearly all were in Boston.

Q. Do you remember whether any of them were sent to you from Lake Superior?

A. No, sir; on Dec. 11, 1867, Mr. Palmer enclosed two notes to me from Pontiac.

Q. Will you state upon what basis you have charged interest in your account?

A. The interest charged to Mr. Palmer was originally, I think, seven per cent., but in times of pressure for money, when I was paying nine and ten per cent., for my own accomodation, the banks were charging me, on Mr. Palmer's notes, eight per cent. I then stated to Mr. Palmer, I think it just and proper you should allow me eight per cent., on our accounts, to which he agreed.

Q. Is there any difference as to the rate of interest between the debtor and credit sides of the account?

A. There is.

Q. How did that originate?

279 A. It arises from the practice of bankers charging one per cent. more than they credit, unless there be a reserve kept in the bank. I have done that.

Q. What do you know in relation to the item charged to you in Mr. Palmer's account, $610.72, received from his son?

A. I know nothing whatever; I have no knowledge of any such transaction.

Q. You have no recollection upon that subject and no account of it?

A. None whatever; I can only say this, that if such a payment had been made it would have been credited at the time.

Q. Up to what time were your books destroyed?

A. Mr. Burr took charge of my books in 1868. All transactions prior to that time which I made a record of were burned.

Q. What time in 1868?

A. My impression is that Mr. Burr took charge of my books in Jan., 1868.

Q. Had he been in your office before that, and if so in what capacity?

A. Yes, sir; he had been there as secretary and treasurer for three or four mining companies.

Q. Previous to that time had he any duties connected with your private business?

A. No, sir.

Q. Who kept your books previous to Mr. Burr's taking charge of it?

A. Myself; I knew enough of book-keeping to charge when I paid out, and credit when I received.

Q. That is about all?

A. That is about all; I don't think I have ever wronged a man out of a dollar, for want of knowledge.

Q. Mr. Hadley was in your employ, and drew up these papers?

A. Yes, sir.

Q. Will you state how he came to draw up the paper—first as to the allotment of stock?

A. Of course I state according to my recollection. By
280 memorandum agreed upon between Mr. Palmer and myself, and the statements here presented were placed before Mr. Palmer and talked over from time to time, and no objection was ever taken to them by Mr. Palmer.

Q. How was it about their being assented to?

A. Why, of course, I considered that as assented.

Q. I don't wan't your reason; just answer the question.

A. Ask the question again.

Q. How was it about his assenting to them?

A. Yes, sir; they were assented to; and I ought to add further that the allotment of stocks made to the Boston gentlemen was made upon that basis, and no exception.

Q. Will you look at Exhibit 48, and state from what data that account was made up by Mr. Hadley?

A. Made up from memorandums I furnished him from day to day, according to the best of my recollection.

Q. Will you state where and how the original of that account was kept?

A. It was kept on a sheet of paper of that form, (illustrating,) and shown to Mr. Palmer from time to time, and copied into my book, which was burned in the fire.

Q. How came it to be kept in the name of Mr. Palmer?

A. That is rather an intricate question. Mr. Palmer and the other Boston gentlemen were frequently at my office, and I remarked to those gentlemen that I could not think of opening a separate account with all the parties interested, and finally it was consented with them that I should make Mr. Palmer the principal point to concentrate on; that I should charge Mr. Palmer the full amount paid out on lands and for the assessments paid out, and credit Mr. Palmer with all received from Mr. Frue or other sources, but the stock allotted to Palmer, Frue, and associates was charged to him. Mr. Palmer was credited with all the amount received. The Boston gentlemen, I believe, paid their assessments.

Q. State what knowledge Mr. Palmer had of the account being thus kept?

A. Well, he saw it from day to day in my office. He
281 was here most of the time—for some months during the winter of 1866–7.

Q. Any objection made to keeping the account that way?

A. None whatever.

Q. When did you know of the first objection?

A. In June, 1867.

Q. Where?

A. In Lake Superior.

Q. What can you say as to copies of that account being furnished to Mr. Palmer?

A. It was furnished to him.

Q. Mr. Palmer has charged you in his account, under date of March 23d, No. 13 of Mr. Palmer's debtor account, "Profit on sales of stock made by Mr. Palmer to Peleg Hall, the proceeds of which were paid to Mr. Loring." What can you say about that item; has that already been accounted for?

A. The whole of the proceeds—the gross amount paid by Hall—was placed to Mr. Palmer's credit. I have never gone into the profits.

Q. But the proceeds of the sale were paid to you?

A. Yes, sir; and appears in Mr. Palmer's account.

Q. Then the proceeds of that sale are credited in your credit account, item No. 16, are they?

A. Yes, sir.

Q. And the next number, 14, of Mr. Palmer's debtor account is "Profits on stock sold to Cotton." State whether the gross proceeds of that sale are included in your credit item, No. 17?

A. They are.

Q. And all the proceeds?

A. And all the proceeds. I can't say positively now, but it is my impression that Cotton had the right to take 500 shares of Iroquois, and it is included in that item.

Q. You don't know whether it was all Kearsarge, then?

A. No; my impression is there were 500 shares of Kearsarge and 500 Iroquois.

Q. And that Iroquois was never organized, I thought?

A. It was not, but he had a right to take it.

282 Q. But whatever the whole proceeds were, you credited them to Mr. Palmer?

A. Yes, sir.

Q. No. 15 of Mr. Palmer's debtor account is charged with 9–10 of the profits of stock sold Sibley and Douglas, $1,550?

A. I know nothing about it.

Q. Look at your credit account No. 18, and see whether that relates to the same transaction?

A. I presume it does. I say, "Sibley, etc.," that is the amount I received from Sibley.

Q. That is the gross proceeds?

A. Yes, sir.

Q. But you made no distinction between profits and costs?

A. No, sir.

At this point, at request of witness, the last three or four questions are read to him, and he says that the answer should read: Received from Sibley on Palmer's account.

Q. The charge is, on Palmer's account, received from Sibley and Douglas; what do you know about Douglas in that transaction?

A. Nothing more than what my accounts state; Sibley & Co., it means.

Q. Was Douglass in company, or connected with Sibley?

A. No, sir. Evidently I must in this have included Doulass' stock, 750 shares of Kearsarge that Mr. Palmer sold, and placed the receipts in my hands.

A. At how much per share?

Q. $4.50 per share.

Q. Do you know of any other sales to Mr. Sibley, or to Sibley and Douglas, than the ones you have given credit for?

A. No, sir; not on Mr. Palmer's account.

Q. There is an item charged, No. 17 of Mr. Palmer's account. "Profits on sales of stock made by Palmer to S. Mandlebaum, proceeds paid to Loring?"

A. I know nothing about it. I won't say it is not so. I have no recollection of it.

283 Q. What can you say whether Mr. Palmer is entitled to the credit for it; that is the point?

A. This grew out of the manner in which the omnibus account was kept. I never charged him for Mandlebaum stock, and therefore he is not entitled to that. He has charged it to profits. The

thing to my mind is perfectly clear. Mandlebaum did have some Kearsarge stock, and he paid for it in the manner described. It was not credited to Mr. Palmer, because the stock was never charged to Palmer in the private account.

Q. Was it in any account charged to Palmer?

A. Charged in this.

Q. But charged as all other stock was?

A. Precisely so. You will find that the same with a good many others there. Of course I could not credit him.

Q. In No. 12 of Mr. Palmer's account he has charged you with $3,475, being a portion of the $10.000 sent you. In the account being Exhibit 48, you have credit cash $10,000. What can you say as to Mr. Palmer's separately being entitled to credit for the amount named, $3,745?

A. I would say that I never had any knowledge whatever of such a transaction. I see his account, and it stands in the same relation precisely as Mr. Mandlebaum's claim.

Q. It was received upon the general omnibus account?

A. General omnibus account. I knew nothing of it until I saw it there.

Q. Mr. Palmer, in his credit account, has credited you, a few days previous to this date, with $3,000 on his own account, that you had not charged to him; what do you know about that?

A. All a mystery to me.

Q. But is not that the same charge in what is called the omnibus account at about the same date?

Q. That I don't recollect.

Q. State whether you find such a charge made in the omnibus account, being Exhibit 48?

A. Yes, sir; I find an entry here under date of December 28th, $3,000, but that is not January 7th.

284 Q. His credit to you is of that date, but his charge to you is afterwards?

A. Undoubtedly that money was paid to Mr. Palmer.

Q. I now call your attention to the statement Exhibit B, connected with Mr. Palmer's account, being a charge for the proceeds of the Franklin stock, going back to 1861?

A. I have seen it.

Q. Commencing in 1858?

A. Yes, sir.

Q. What can you say in relation to that claim?

A. I can say in relation to that claim, in 1858 there were communications between me and Mr. Palmer as to the Franklin stock, as to that account it is all a myth. I never knew anything about it until it was presented here.

Q. State whether previous to the commencement of the account filed in this case, which dates in 1865, you had had a settlement with Mr. Palmer?

A. In full.

Q. And how long previous to 1865 had passed that you had no dealings?

A. To the best of my recollection, two years.

Q. Until the filing of this account state whether Mr. Palmer has ever made any claim upon you or demand in any way for the proceeds of the Franklin stock here charged?

A. None whatever.

Q. What can you say as to having received Franklin stock, or its proceeds, belonging to Mr. Palmer, which you have not accounted for?

A. The account was equalized and closed, the whole transaction relating to that stock.

Question repeated.

A. I will say that nothing was received which was not embraced in the settlement of the account of that stock, nothing since has been received.

Examination was here adjourned until July 23d, 10 o'clock, a. m.

285 JULY 23D, 10 O'CLOCK A. M.

Examination of the witness Loring continued.

The WITNESS. I wish to correct what I said about commissions of one per cent. I met a partner of one of the first banking houses in the city yesterday, and to make sure that I was right I asked him what the practice of banks was in that regard, and he tells me that the practice has been changed somewhat since that time, but that one more objectionable to the debtor had been introduced, to wit: It is customary for the man to make a deposit, and at the time they agree upon a *date* of interest, which the banker shall pay him while that remains; but if the gentleman wants funds subsequent to the withdrawal of his deposit, they agree on the rate of interest, and besides all they are entitled to commissions on guarantee notes.

Q. Look at that letter. This connects itself with item No. 27, being the 200 certificates of Ossipee. Look at that letter and see in whose handwriting it is, (handing a paper to the witness.)

A. That is Mr. Palmer's.

Q. Whether it was received by you soon after its date?

A. It was.

The letter referred to is here marked Exhibit 72 and offered in evidence, of which the following is a copy:

KEARSARGE MINING COMPANY,
CALUMET, MICH., *Aug.* 9, 1869.

E. T. LORING, ESQ.

DEAR SIR: I have two letters from you since my last. * * * There has been an opening made on sec. 7 south of Kearsarge, on the red amygdaloid. It is very rich and will make a stir. John C. and David are looking for Lantern on Ossipee.

There is a prospect that the R. R. to L'Anse will be built, and I believe it is pretty certain that our iron lands are valuable. I believe they have as good ore on as any at Marquette. I believe I
286 can get at this matter this season. * * I received Ossipee stock, 209 shares, which was promised to Peters and King. I shall write you soon again.

Truly yours, CHAS. H. PALMER.

Q. I now call your attention to Nos. 26 and 27 of the defendant's debtor account. Please look at the Exhibits I now show you, purporting to be receipts for assessments upon Ossipee, and state whether those are the original receipts, and whether the assessments were paid by you in accordance with their terms?

A. They were, and they were paid into the hands of Mr. Burr, treasurer at the time.

Papers referred to by the witness are offered in evidence and marked Exhibits 73, 74, 75, and 76.

The following is a copy of Exhibit 73:

$10,116.66.]

Received of E. T. Loring on ac. of C. H. Palmer and others, ten thousand one hundred and sixteen 66-100 dollars, assessment on five thousand shares of Kearsarge stock, with interest from Feb. 1st to April 11, 1867.

LA FAYETTE BURR, *Treas.*

The following is a copy of Exhibit 74:

$1,011.66.]

Rec'd of E. T. Loring, on ac. of C. H. Palmer, one thousand eleven and 66-100 dollars, for assessment on five hundred (500) shs. of Kearsarge stock, with interest from Feb. 1st to Apr. 11, 1867. (Divided between Hall, Bowen & Anthony.)

LA FAYETTE BURR, *Treasr.*

The following is a copy of Exhibit 75:

KEARSARGE MINING COMPANY,
BOSTON, *Nov.* 6, 1868.

Received from E. T. Loring, trustee, ac. C. H. P., seven
287 hundred and four dollars (44-100), the same being in full for the 1st assessment of two (2) dollars a share upon 425 shares of the capital stock standing in his name.

$637 50
66 94 interest at 6 per cent.

---

$704 44

LA FAYETTE BURR,
*Treas. Kearsarge Mining Co.*

The following is a copy of Exhibit 76:

OSSIPEE MINING COMPANY,
BOSTON, *Nov.* 6, 1868.

Received from E. T. Loring, trustee, ac. C. H. P., ten hundred

ninety-five dollars 56-100, the same being on ac. of the 1st assessment of 3½ dollars a share upon 10,524 shares of the capital stock standing in his name.

Interest at per cent.

$1,095 56

LA LAYETTE BURR,
*Treas. Ossipee Mining Co.*

Q. I now call your attention to the items from 96 to 99 of your debtor account, being charges to Mr. Palmer, of Torch Lake stock allotted to Frue, the first four items. Please state upon what ground you charged to Mr. Palmer the Torch Lake stock allotted to Mr. Frue and the assessments upon that stock?

A. The reason was because Mr. Palmer having bought all that stock in New York, drew on me for the cost of the same, and stated at the same time that he was buying on Frue's account, as well as those of his friends, and subsequently Mr. Frue, objecting to the payment of that stock, as a consequence I charged it to Mr. Palmer.

Q. At the time when these negotiations were opened, state whether Mr. Palmer left with you a copy of a part of a letter from Mr. Frue upon that subject?

A. He did. That is the copy which Mr. Hadley made from the original (producing the paper).

288 The paper is offered in evidence and marked Exhibit 77, of which the following is a copy:

HOUGHTON, MICH., *Dec.* 31*st*, 1866.

CHAS. H. PALMER, Esq.

DEAR SIR: Enclosed please find the following drafts on account of purchase land, to be applied on purchase of lands in Sects. 24 and Penn. As I understand it, the purchase in 26 will be paid out of the treasury of Ossipee:

| | |
|---|---|
| Franklin draft No. 4451 | $2,000 00 |
| " " " 4378 | 1,025 00 |
| Adams " " 59 | 875 00 |
| South Pewabic draft No. 14 | 150 00 |
| " " " " 15 | 2,500 00 |
| " " " " 16 | 1,000 00 |
| Grand Portage " " 1852 | 600 00 |
| 1st Nat. Bank, Houghton, draft No. 2770, on Cent. Nat. Bank, N. Y. | 3,500 00 |
| W. B. Frue on R. H. Rickard, Dec. 31st, 1866 | 6,000 00 |
| " " " A. H. Sibley, delivered to C. H. P. | 6,901 48 |
| Wm. R. Noble on R. H. Rickard | 600 00 |
| Conrad Kalb " " " | 250 00 |
| | $25,401 48 |

Q. Did Mr. Palmer show you the original letter of Frue's at that time of which that is a part copy?

A. No, sir, he handed the original letter to Mr. Hadley, and Hadley copied such portions as Mr. Palmer directed.

Q. Did you at the time know the contents of the original letter, except as given in this extract?

A. No, sir.

Q. When did you subsequently learn the contents of the entire letter of Frue to Palmer?

A. In Detroit, in 1874.

Q. State whether the exhibit I now show you is a copy of the entire letter, as then exhibited.

Hands a paper to witness.

A. This was copied from the exhibits made in 1877, in the case of Frue *vs.* Loring.

289 Q. State whether you believe that to be a correct copy of the original letter?

A. I do; I guess Mr. Burr will confirm that.

Paper referred to marked Exhibit 78, and offered in evidence, the following being a copy:

ADAMS MINING COMPANY,
HOUGHTON, MICH., *Dec.* 31*st*, 1866.

CHAS. H. PALMER, Esq.

DEAR SIR: Enclosed please find the following drafts on account of purchase of land, to be applied on purchase lands in sections 24 and Penn. As I understand it, the purchase of 26 will be paid out of the treasury of Ossipee:

| | |
|---|---|
| Franklin draft No. 4451 | $2,000 00 |
| " " " 4378 | 1,025 00 |
| Adams " " 59 | 875 00 |
| South Pewabic draft No. 14 | 150 00 |
| " " " " 15 | 2,500 00 |
| " " " " 16 | 1,000 00 |
| Grand Portage " " 1852 | 600 00 |
| 1st Nat. Bank, Houghton, draft No. 2770 on Cent. Nat. Bank, N. Y. | 3,500 00 |
| W. B. Frue on R. H. Rickard, Dec. 31st, 1866 | 6,000 00 |
| " " " A. H. Sibley, delivered to C. H. P. | 6,901 48 |
| Wm. R. Noble on R. H. Rickard | 600 00 |
| Conrad Kalb " " " | 250 00 |
| Making | $25,401 48 |

twenty-five thousand four hundred and one, 48-100 dollars. In addition to this there will be $2,700 deposited with E. T. Loring by Henry Crocker for 300 shares Adams, provided he takes it on despatch sent to-day, in answer to his letter. *As soon as the certifi-*

*cates for amount sold in Kearsarge and Ossipee are received here we will settle up these two concerns and forward the remainder of the money with enough to cover our first investment, and also the* $2.00 *per share for the treasury. In case it is absolutely necessary to raise more money forthwith to go into our purchase, you can take my contract and place it as collateral, and raise money on it.* But believing some of the purchases will be on time, this may not be necessary—still if it is, you have the instructions.

290

In regard to the Rhode Island engine, I do not know what to say, as I infer from your letter it is not the intention to push mining to any extent this winter. If this is so I think we had better not take the engine at the price, as we will have time enough to get one early in the spring. At the saw-mill they have about 30,000 feet logs on hand. I think it would be well to purchase them at a fair price; also getting the right to use the mill to cut them into lumber. The logs have been out some time with the bark on, consequently they are considerably worm eaten, and I think ($6) six dollars a thousand would be a fair price for them. These we could have sawed out and hauled during the winter, so as to have lumber on hand next summer.

There is nothing new from our explorations. In fact everything has been dead the past eighty days. Work will be again resumed on Wednesday. The show at South Pewabic and Adams still continues good. Considerable copper again showing in the transverse.

Hoping you will be successful in the purchase of Penn and 24, and wishing you a happy New Year, I remain,

Yours truly,

WM. B. FRUE.

P. S.—Sibley's draft you will please present yourself. I have written him to that effect.

Q. You have already stated in your examination that the stock of the Torch Lake Co., or so much of it as had been allotted to Mr. Frue and Palmer, was under your control, where it could be delivered upon their paying your account?

A. I believe so.

Q. Will you state whether those certificates of stock are the ones you refer to (presenting papers to witness)?

291

A. They are—that is, there may be some change in the certificate, and in making this transfer, I did it with a view to make it perfectly safe, to my sons, not to defraud my creditors, for I intended to pay all honest claims and interest at seven per cent. on them.

Q. State whether the endorsements to your son to whom the stock was assigned on the transfers, were made at the time they bear date?

A. Certainly, it was. I say, certainly: because Mr. Burr was a witness.

Q. Simply answer the question. You can answer it?

A. Yes, sir.
Q. And have you held the certificates since then?
A. Yes, sir.

The certificates are offered in evidence, and marked 79, 80, 81 and 82.

Exhibit 79 is a certificate for 1,000 shares of stock in Torch Lake Mining Company to Thatcher Loring, dated Boston, May 14, 1875, signed by E. T. Loring, president; La Fayette Burr, secretary. No. of certificate, 105.

On the back of this certificate is an assignment from Thatcher Loring to Elisha T. Loring, dated 18th day of May, 1875, and witnessed by La Fayette Burr.

Exhibit 80 is a certificate for 1,250 shares in the Torch Lake Mining Company, issued to Thacher Loring, dated Boston, April 29, 1875, signed E. T. Loring, president; La Fayette Burr, secretary. No. of certificate 102.

This certificate has upon its back an assignment precisely similar to that on Exhibit 79.

Exhibit 81 is a certificate for 1,250 shares of Torch Lake Mining Company, issued to Charles W. Loring. dated Boston, April 29th, 1875, signed E. T. Loring, president; La Fayette Burr, secretary; and numbered 101.

This certificate bears upon its back an assignment to Elisha T. Loring, from Charles W. Loring, dated April 29, 1875, witnessed by La Fayette Burr.

Exhibit 82 is a certificate for 1,000 shares of Torch Lake
292 Mining Co. stock issued to Charles W. Loring, dated Boston, May 14th, 1875, signed E. T. Loring, president; La Fayette Burr, secretary. No. of certificate, 106.

This certificate bears on its back an assignment to Elisha T. Loring by Charles W. Loring, dated 14th May, 1875, witnessed by La Fayette Burr.

Q. You have already stated that certain of these stocks allotted to Mr. Palmer were sold in 1870, but that you had been advised that the sale was illegal, as against Mr. Palmer, and that you had treated it as a nullity?
A. Yes, sir.
Q. Will you state whether any notice was given to Mr. Palmer of that sale, in advance of the sale?
A. Of the intended sale, you mean?
Q. Of the intended sale, in advance of it?
A. I will say there was such a notice forwarded by myself, I think, at four different times, in an envelope, either by myself, or Mr. Burr.
Q. Is that a copy of the notice that was forwarded?
A. Yes, sir.

A paper handed to the witness is marked Exhibit 83, and the paper attached thereto is marked Exhibit 84, of which the following are copies:

EXHIBIT No. 83.

STOCKS.

On Wednesday, September 28th, at 12 o'clock, at the Merchant's Exchange Reading Room, old State House, as collateral:

7,285 shares Ossipee Mining Co., subject to assessment of $3,-347.99, with interest on the same from February 1, 1867, at 6 per cent.

1,199 shares Kearsarge Mining Co.
3,600 " Torch Lake Mining Co.
1,420 " Adams Mining Co.
250 " So. Pewabic Copper Co.

293 13-40 undivided interest in the following-described lands, to wit: Of the south halves of section 35 and 36, township 56 north, range thirty-three (33) west, in the county of Houghton, and State of Michigan.

The following is a copy of Exhibit 84:

*Sale by auction for account of E. T. Loring, as collateral—by Henshaw & Brother.*

| | | | | |
|---|---|---|---|---|
| 7,285 shares | Ossipee Mining Co | @ 50 c | | $3,642 50 |
| 1,199 " | Kearsarge Mining Co | @ 70 c | | 839 30 |
| 3,600 " | Torch Lake Mining Co | @ 05 c | | 180 00 |
| 1,420 " | Adams Mining Co | @ 25 c | | 355 00 |
| 250 " | So. Pewabic Copper Co | @ 07 c | | 17 50 |
| 13-40ths | Section 35 & 36 Township 56 north, range 33 west, Houghton county, Michigan | @ 01 c | | 1,200 00 |
| | | | | $6,234 00 |
| | Com | $25 00 | | |
| | Tax 1–10 | 6 23 | $6,234 30 | |
| | Advertising | 26 00 | 57 23 | $6,177 07 |

E. E. BOSTON, *Sept.*, 30, 1870.

HENSHAW & BRO.

Q. Look at Exhibit 84 now shown you, purporting to be a report of the sale at auction, and state whether that is the original report of the sale made to you?

A. I presume it is; I have no doubt of it, inasmuch as it bears the signature of the auctioneers.

Q. Were you present at that sale?

A. No.

Q. Subsequent to that sale did you see Mr. Palmer and have any conversation with him in relation thereto; and if so, when and where?

A. It was early in Oct., 1870, at the Russell House, in Detroit,

when a conversation took place regarding the sale. I then assured Mr. Palmer that I would guarantee that the entire stock sold should be placed at his disposal on settlement of my account.

Q. Look at Exhibit 85, now shown you, and say whether that is the original letter of Mr. Palmer's?

A. It is.

294 Q. Received by you?

A. Yes, sir.

Q. At the time it is dated about?

A. Yes, sir.

Paper offered in evidence marked Exhibit 85. The following being a copy:

E. & F. LYON,
MICHIGAN EXCHANGE, DETROIT, *Oct.* 10, 1870.

E. T. LORING, Esq.:

Your letter came while I was in Detroit. I returned the next morning. This stock was put in my name for the purpose of reorganizing the Co. and changing the offices. I had forgotten that any of the stock was in my name. I send this to Boston.

Truly yours, CHAS. H. PALMER.

Q. State whether upon the reception of the letter you wrote to Mr. Palmer, and if so, whether that is a copy of the letter? (Handing paper to the witness.)

A. I wrote Mr. Palmer, and that is a copy of the letter.

Letter referred to marked Exhibit 86. The following being a copy:

BOSTON, *Oct.* 12*th*, 1870.

CHAS. H. PALMER, Esq., Pontiac, Mich.

DEAR SIR: I have this morning your favor of the 10th, with the enclosed certificate all correct. I am glad that you erased part of that endorsement, and would remark that at the time of placing it there I did not anticipate an interview with you. This endorsement or your signature was necessary for the security of the purchase.

I mentioned to the auctioneer the remark you made to me in Detroit, viz: That you did not receive the advertised notice of sale of collaterals until a few days before the sale took place, by reason of your change of residence. He replied this made no material difference, and remarked if there was any dissatisfaction on

295 your part he would guarantee that the parties who purchased it would transfer the stock back to you on your paying the price at which it sold and the expenses, as they were quite indifferent about it. I wish you could find some one who would do this for you and pay the balance of assets due the company, which I have been obliged to assume.

Yours truly, E. T. LORING.

Q. Look at Exhibit 87 and state whether that is the original letter of Mr. Palmer's received by you?

A. Yes, sir.

Q. About the time of its date?

A. Yes, sir.

Letter referred to marked Exhibit 87 and offered in evidence, the following being a copy:

PONTIAC, *Nov. 7th*, 1870.

E. T. LORING, Esq.

DEAR SIR: I arrived home Saturday night and found your letter of the 20th. I received one before in which you repeat a conversation with me while in Detroit, not in accordance with the fact. I said I received an envelope containing a notice of sale of stock, remailed at Houghton, Sept. 26, and received by me about the 1st of Nov. But I do not see what importance this has or why you should have sent to me any notice whatever of the sale of this stock.

In regard to the 200 shares given Frue, the company should authorize that issue, as it was arranged and provided for in the organization of the company. But I object to the account being presented in my name, unless you do so as a convenience to yourself. The reason of this is it would present me in a wrong position. It is the business of the company and not mine. I return the account with such remarks as you can show to Bigelow.

Yours truly, CHAS. H. PALMER.

Q. Look at Nos. 103, 104, 105, relating to section 23,
296 whether since the purchase of 23 you have paid the taxes and have incurred other expenses in relation thereto?

A. Yes, sir.

Q. What other items of expense have you charged besides these taxes?

A. Compensation for the agent at the lake, the secretary's and treasurer's salary, the taxes, and commissions of five per cent. on the expenses.

Q. Will you state what that five per cent. commission relates to?

A. I can't; it relates to Mr. Burr's testimony.

Q. What do you charge?

A. Why, the interest——

Q. It is to cover your trouble and responsibility of trustee?

A. Yes, sir.

Q. What do you know about its being usual to charge commission for such services?

Objected to as incompetent.

Q. Do you know anything about it—do you know anything about the custom of other people?

A. Oh, I know a business man is not expected to take charge of property and assume a business responsibility for nothing. I thought it a very moderate charge.

Mr. WALKER. I propose to ask leave to amend and insert commissions for guaranteeing Mr. Palmer's notes.

Q. You have already stated that for Mr. Palmer's convenience, and to aid in advances that you made to him, you were to receive his notes from time to time; that you endorsed them and paid them?

A. I paid them; procured their discount and paid them at maturity.

Q. What can you say as to the propriety of a charge for commissions for such services?

Objected to.

A. Among business men, when one endorses a note for another, it is very common to charge a commission according to the
297 understanding of the parties, varying all the way from one, one and a half to two per cent., sometimes five, that is, among business men.

Q. Isn't it a common usage to charge commissions?

A. Yes, sir, a common usuage. Of course, for accommodations between friends it is different.

Q. What commission do you think would be a proper and reasonable compensation under the circumstances, and the usage of business men?

A. In an instance like the present?

Q. Yes, sir.

A. Two and a half per cent. would be the least.

Q. You have already stated that you made advances for taxes and other expenses connected with the Torch Lake property?

A. Yes, sir.

Q. And that the assessments charged and paid by you were levied to meet these advances and expenses?

A. Yes, sir.

Q. Can you state about what amount was due to you, when the last assessment was laid in 1879, from the company?

Mr. SEAGER. These are introduced, we reserving the right to examine the original entries where there are books of account.

A. According to the terms, there was due me on the first of April $2,940.77.

Q. And what was the amount of assessment then laid?

A. Twenty cents a share, equal to $4,000.

Q. And the balance of that sum is in the treasurer's hands to meet expenses?

A. It will be, undoubtedly, when it is paid.

Examination of this witness is here suspended for the purpose of calling Mr. Burr.

THURSDAY, *July 24th*, 10 o'clock A. M.

Defendant's counsel offers in evidence copies of the record order-

ing the two assessments on Torch Lake stock, which are marked Exhibit 89, of which the following is a copy:

298 *Meeting of the Directors of the Torch Lake Mining Company.*

BOSTON, *April 8th*, 1872.

A meeting of the directors of the Torch Lake Mining Company was held this day at their office, No. 31 Kilby street, at 12 m. Present, Messrs. Loring, Bigelow, Shute, and Burr.

The meeting was called to order by the president, and the reading of the minutes of the last meeting waived.

The president stated that the object in calling the meeting was to consider the advisability of purchasing the two half sections of land adjoining that of the company on the south, and of levying an assessment for this purpose, and for paying the present indebtedness of the company.

After due examination and discussion, it was *voted* that the treasurer of this company be authorized to purchase two half sections of land adjoining on the south the land of this company, at a price not exceeding ten thousand dollars, ($10,000,) on 30 days' time; and, if further time is required, that he be, and is hereby, authorized to issue notes of the company to that amount on 60 or 90 days' time, bearing interest at seven (7) per cent. per annum, for the purchase of the land above mentioned.

*Voted*, That for the purpose of meeting the requirements of the company, in accordance with vote just recorded, and of paying its present indebtedness, an assessment of seventy-five (75) cents per share be levied upon the capital stock of the company, payable on Saturday, the 20th instant, with interest at seven (7) per cent. after that date, and that no transfer of stock be made without the payment of this assessment, with interest that may be due thereon.

*Voted*, That the resignation of Alex. H. Sibley as a member of the board of directors of this company be accepted.

There being no further business before the meeting, it was dissolved.

Attest: LA FAYETTE BURR, *Clerk.*

299 *Meeting of the Directors of the Torch Lake Mining Company.*

BOSTON, *March 19th*, 1879.

A meeting of the Directors of the Torch Lake Mining Company was held this day at their office, No. 22 Central street, at 1 o'clock p. m.

Present, Messrs. Loring, Clark, Cotton, H. Loring, and Burr.

Meeting called to order by the president, and statement made of the indebtedness of the company, amounting to about three thousand (3,000) dollars.

The treasurer submitted a statement showing amount borrowed and expenses of past two years, and on motion it was *voted* that an assessment of twenty (20) cents per share be levied on the capital

stock of the company, payable on Tuesday, the 15th day of April next, with interest after that date at seven per cent.

There being no further business before the meeting, it was dissolved.

*La Fafette Burr recalled, and examination continued*

Q. State whether that paper, being Exhibit 89, is a true copy of the records of the Torch Lake Company?

A. Yes, sir; I have just compared it.

Look at the exhibit I now show you, marked 90, and state whether that is a copy of the account kept with Mr. Palmer since January, 1868, upon the books of Mr. Loring?

A. It is a true copy, to the best of my knowledge and belief.

Q. Is there any other account on the books of Mr. Loring beyond the one contained on that paper?

A. Not that I know of.

Paper offered in evidence and marked Exhibit 90, of which the following is a copy, except the items printed in italics, which were afterwards added by amendment, as appears from the testimony of Mr. Burr:

300

EXHIBIT No. 90.

CHAS. H. PALMER IN ACCOUNT WITH E. T. LORING.

| 1868. | | DR. | |
|---|---|---|---|
| Jan. | 1, | To capital stock, amount shown by private acc't C. H. P | $6,069 60 |
| | 4, | cash paid for stamps | 2 50 |
| | 21, | " assessments on 100 shs. Hecla stock | 400 00 |
| Feb. | 11, | cash paid interest on notes dis. at B. Bank, $400, stamps $5 | 405 00 |
| | 17, | cash loaned C. H. Palmer | 100 00 |
| | 26, | cash paid his draft, favor A. H. Sibley | 250 00 |
| | 29, | cash paid acc't his note $5,000 disc'ted at Wareham bank, $177.92, stamp $2.50 | 180 42 |
| | 29, | cash paid S. & Welch for declaration of trust, A. H. S. | 6 00 |
| March | 9, | cash paid interest for renewal of note 6 mos. $203.33, stamps $2.50 | 205 83 |
| | 19, | cash paid his note this day | 5,000 00 |
| April | 15, | cash paid for stock in D. & Lake S. Copper Co. | 2,925 00 |
| | 18, | cash paid his note this day | 5,000 00 |
| | 18, | cash p'd his draft favor Revere House | 171 61 |
| | 25, | cash paid his note | 5,000 00 |
| May | 1, | cash paid acc't stock in Weed File Co | 211 47 |
| | 4, | cash paid draft Bingham, Wesley & Co | 200 00 |
| June | 13, | cash paid acc't stock in Weed File Co | 211 47 |
| Aug. | 14, | cash paid his note | 5,000 00 |
| | 17, | " " | 5,000 00 |
| | 20, | cash paid assessments 509 shs. Ossipee M. Co. contingent, assumed by E. T. L | 763 50 |
| | 20, | cash paid interest on ditto, Feb. 1, '67 | 71 13 |
| | 20, | cash paid bal. interest D. & L. S. C. Co. stock | 9 01 |
| | 22, | cash paid his note at North Bank | 5,000 00 |
| | 28, | cash paid his note at Barnstable Bank | 5,000 00 |
| | 31, | cash paid his note at Barnstable Bank | 5,000 00 |

| | | | | |
|---|---|---|---|---|
| 1868. | | | | |
| Sept. | 1, | To cash paid his note at Barnstable Bank | $5,000 00 | |
| | 12, | cash paid his note at Barnstable Bank | 5,000 00 | |
| | 30, | cash paid assessment 250 shares South Pewabic, $750, interest $6.28 | 756 28 | |
| Nov. | 6, | cash paid assessment on Kearsarge | 704 44 | |
| | 6, | cash paid assessment on Ossipee | 1,095 56 | |
| | 23, | cash p'd his draft favor S. Mandlebaum | 1,200 00 | |
| Dec. | 16, | cash paid his note at bank | 5,000 00 | |
| | 19, | cash paid his note at bank | 5,000 00 | |
| | 31, | interest account | 293 56 | |
| 301 | | | | |
| 1869. | | | | |
| Jan. | 6, | To cash paid his note at bank | $5,000 00 | |
| | 15, | cash paid his note at bank | 5,000 00 | |
| Feb. | 17, | cash paid renewing note at bank | 200 00 | |
| | 20, | cash paid his note at bank | 5,000 00 | |
| Mar. | 3, | cash paid his note at bank | 5,000 00 | |
| | 8, | *bills receivable* | 5,103 33 | |
| | 12, | *bills receivable* | 5,103 33 | |
| | 20, | bills paid sale of Hecla stock | 25 80 | |
| | 31, | interest account | 162 67 | |
| April | 1, | assessment Adams' stock and interest, cash Nov. 10, $1,424.14, int. $39.04 | 1,463 18 | |
| Aug. | 13, | cash paid his note at bank | 5,000 00 | |
| | 28, | cash paid his note at bank | 5,000 00 | |
| | 28, | capital stock to correct error in balance Dec. 31, 1869 | 09 | |
| | 31, | land account (bal. deducted from am't charged land account) | 1,093 68 | |
| | | | | $119,384 46 |

| | | | | |
|---|---|---|---|---|
| 1868. | | Cr. | | |
| Jan. | 4, | By cash rec'd from note of C. H. P., 4 mos. | $4,845 84 | |
| Mar. | 11, | " " H. Bigelow 400 shares Torch Lake, $600, interest $43.17 | 643 17 | |
| April | 1, | cash rec'd from 2,000 shs. Torch Lake, $3,000, interest acc't $195 | 3,195 00 | |
| | 13, | cash rec'd from his note 4 mos. $4,848.76 less stamps $2.50 | 4,846 26 | |
| | 20, | cash rec'd from J. H. Cotton 1,000 shs. Torch Lake $1,500, interest $119.29 | 1,619 29 | |
| | 23, | cash rec'd from his note 4 mos., April 20, at 9 per ct., $4,850, less stamps $2.50 | 4,847 50 | |
| | 28, | cash rec'd from his note 4 mos. $4,846.25, less stamps $2 50 | 4,843 75 | |
| July | 1, | cash rec'd from div. 1,125 shs. D. & L. S. Copper Co | 1,687 50 | |
| Aug. | 14, | cash rec'd from his note 4 mos., equal to cash Aug. 23 | 4,877 92 | |
| | 17, | cash rec'd from his note Globe Bank | 4,860 83 | |
| | 18, | cash received from his note 6 mos. at 8 p. c. | 4,794 17 | |
| | 20, | cash rec'd from 509 shs. Ossipee stock fully paid | 2,641 42 | |
| | 28, | cash rec'd from his note 6 mos. Aug. 25 | 4,794 17 | |
| | 31, | cash rec'd from his note 6 mos | 4,795 28 | |
| Sept. | 3, | cash rec'd from his note 4 mos | 4,860 83 | |
| | 12, | cash rec'd from his note 4 mos | 4,843 75 | |
| 302 | | | | |
| Nov. | 6, | cash rec'd from L. Burr, account lands Sec. 5 | 3,000 00 | |
| Dec. | 21, | cash rec'd from F. J. Kingsbury (D. & L. S. Copper Co) | 5,000 00 | |

| | | | |
|---|---|---|---|
| 1868. | | | |
| Dec. 28, | By cash rec'd from F. J. Kingsbury (D. & L. S. Copper Co) | $10,000 00 | |
| 1869. | | | |
| Feb. 16, | cash rec'd from his note | 4,801 94 | |
| Mar. 20, | cash rec'd from 100 shs. Hecla stock | 8,000 00 | |
| 31, | land account | 15,042 19 | |
| *April* 30, | *sundries, bills receivable* $10,206.66, *interest* $47.63 | 10,254 29 | |
| Aug. 30, | interest account | 289 36 | |
| | | | $118,384 46 |

Q. I see by that account that in March, 1869, it was balanced by a credit, "land account, $15,042.19"?

A. There was a corresponding debit charged to him.

Q. And that subsequently a charge was made upon the book to Mr. Palmer, of $1,093,68. Can you explain those charges?

A. Only in this way: I suppose it was found that the amount carried to the land account was too large, and that this was properly charegable to Mr. Palmer's account, making the true account some $13,000. That appears upon the account.

Q. Look at the exhibit now shown you, being Exhibit 91, and see whether that is a copy of the land account to which you have referred, as taken from the books of Mr. Loring?

A. It is.

Q. Is there any other account upon his books entitled "land account," that you know of?

A. Not that I am aware of.

Paper just handed the witness is marked Exhibit 91, and offered in evidence. The following being a copy:

303 EXHIBIT No. 91.

*Land Acc't (C. H. Palmer and others) in Account with Elisha T. Loring.*

| | | | |
|---|---|---|---|
| 1869. | | | |
| March 31, | To balance on land account passed to credit of C. H. Palmer | $15,042 19 | |
| Aug. 31, | interest due on $15,042 19, 5 mos. a 8 p. c. | 501 40 | |
| Sept. 3, | assessment on 250 shs. South Pewabic stock and interest | 1,311 16 | |
| Dec. 31, | interest balance to date | 420 29 | |
| 1870. | | | |
| Sept. 30, | interest on $16,181.86 from Dec. 31, 1869, to April 30, 1870, at 8 per cent | 431 52 | |
| 30, | interest on $16,612.88 from April 30, 1870, to Aug. 31, 1870, at 8 per cent | 443 01 | |
| 30, | interest on $17,055.89 from Aug. 31, 1870, to Sept. 30, 1870 | 118 71 | |
| | CR. | | |
| 1869. | | | |
| Aug. 31, | By C. H. Palmer charged private acc't | | $1,093 68 |
| 1870. | | | |
| Sept. 30, | cash rec'd from sales of collaterals | | 6,177 07 |
| 1874. | | | |
| Dec. 31, | capital stock | | 10,992 53 |
| | | $18,263 28 | $18,263 28 |

Q. I see that that account appears to have been closed by the entry made in 1874 to capital stock; explain what that means?

A. Simply entered to close the account. Equivalent to charging it to profit and loss. It was simply taken out of the books.

*Elisha T. Loring's Examination Resumed.*

Examined by Mr. WALKER:

Q. It appears by the testimony that two accounts were kept by you previous to 1868?

A. Yes, sir.

Q. One, termed an omnibus or land account, and the other, a private account with Mr. Palmer?

A. Yes, sir.

Q. What was the theory upon which that omnibus account
304 was opened with Mr. Palmer, and that other claims were entered in it?

A. It will be noticed that between 1865—I believe that was the time that account was opened with Mr. Palmer—in the fall of 1866, when these land operations were commenced, that for the time being, for a year or more it was thought best to keep it separate from Mr. Palmer's private account, and it was opened in such a way as to give as little trouble in keeping accounts with all the original stockholders as possible. I suggested that Mr. Palmer should be made the medium of receiving and paying out expenses of the organization of the company. That was the origin of it. I carried out that plan and charged Mr. Palmer with the costs of the lands bought, and the assessments paid, and credited Mr. Palmer with the moneys received from Mr. Frue and other sources.

Q. What was your understanding at that time as to the extent of Mr. Palmer's representing Frue, and their interests being together?

A. I supposed up to June, 1867, that they were in reality co-partners, operating together for their mutual benefit. They had correspondence by telegram. The account was kept in Mr. Palmer's name, Mr. Frue having an interest according to the amount of stock assigned to him.

Q. Were you any bookkeeper?

A. No, sir.

Q. Had you any bookkeeper employed at the time?

A. I had no bookkeeper before Mr. Burr took charge of the books. That is, not for some years previous.

Q. State how, after January, 1868, the account was k[illegible]

A. Kept as represented in these two accounts.

Q. Kept as in Exhibit 90.

A. Yes, sir.

Q. What change was afterwards made, and how came it to be made in the land account?

A. There is no material change made until the trial of 1874, in Detroit.

305 Q. I am talking about your bookkeeping.

A. I say there was no change made in my books until—I won't be positive whether it was 1874 or 1877, but, as a consequence of the result of that trial, I felt compelled to make my matters conform to the result of that trial, conform to that original memorandum; had no reference to the books whatever.

Q. How has this been made up?

A. On original memorandums; that trial balance of stock as assigned to the different parties.

Q. Does that account, which you have filed with the Master in detail, correspond with your books, or is it upon a different basis?

A. Upon entirely a different basis.

Q. State if at any time you ascertained that Frue and Palmer repudiated any connection in their accounts, and when did you ascertain it, if you did ascertain?

A. I ascertained it in June, 1867, that Frue repudiated all connection with Palmer in procuring those funds, notwithstanding that Frue had been advised on the receipt of funds by me that were placed to the credit of Chas. H. Palmer.

Mr. POST. Is that by letter?

A. That is by letter.

Mr. WALKER. Were the letters written to Frue kept in the letter book?

A. They were.

Q. Where is that letter-book?

A. It was burned in the fire.

Q. I see there are some items credited in Exhibit 90 to Mr. Palmer that are not contained in your account; for instance, there is one under date of April 1st, as Torch Lake stock. Will you explain to what it refers?

A. On remodeling my accounts I omitted items previously credited to him, because I fell back on my original vouchers.

Q. You said you omitted charging what you previously credited to him?

A. I mean what I previously credited to him in 1868 I have not charged in the present account.

306 Q. You mean you have not credited it in this account?

A. They were not credited to him. To put it in other words, items in this account which here appear credited, don't appear in his account, nor are they filed.

Q. Now, will you state whether that is an item to which he is entitled, the item dated April 1st, 1868, to which Mr. Palmer is entitled to credit?

A. No, sir.

Q. Why not?

A. The Torch Lake stock is not entered in his present account. It was not entered at that time; I have since charged that. In his present account I have charged no more Torch Lake stock than was assigned to him and Frue, omitting this 2,000 shares.

Q. Whose was that?

A. Mine.

Q. Why was that originally charged to him in the original account?

A. I had charged Mr. Palmer the whole amount in the omnibus account, but after discrediting my books, seeing the result of the trial, I could not make up a correct account without resorting to the original memorandums.

Q. Look at the entry under date of April 20th, on the same Exhibit, which is a credit to Mr. Palmer for cash received from John Cotton for Torch Lake stock?

A. It stands precisely in the same condition as that of mine, 2,000 shares.

Q. Do either of these entries cover the stock with which you charged Mr. Frue or Mr. Palmer?

A. In the present account?

Q. Yes, sir?

A. No, sir.

Q. No connection with it?

A. No, sir.

Q. And this is credited in this account because the whole cost of the Torch Lake had been charged in the omnibus account?

A. Yes, sir.

307 Q. Look at the entry upon this same Exhibit 90, under date of Aug. 20th, containing a credit received from 509 shares of Ossipee stock, $2,641.42. Is that credited on your account filed in this case?

A. No, sir.

Q. And why not?

A. Because it was not charged to him, and therefore not credited to him; that is a stock, as will be seen, assigned to other parties; he would not take it, and in this account, which is connected with the land account, I credit it to Mr. Palmer, but in the account now filed it is not charged to him.

Q. And is he entitled to any benefit from them?

A. No, sir.

Q. Did the proceeds of the stock thus entered here belong to him, was it charged to him?

A. In no way whatever, not in the present account.

Q. Is that the same stock that is charged to him under the similar date upon the debtor side?

A. Yes, sir.

Q. In Exhibit 91 there is a credit in the land account, "To cash from collaterals, $6,177.07." What does that relate to?

A. Relates to the proceeds which the collateral stocks netted at the sale. I credited them at that time, and subsequently the whole sale being annulled, it was void.

Q. What do you mean by being annulled; you simply mean you considered it invalid?

A. Yes, sir, the sale of collaterals not being legal, as advised by counsel, I considered them null and void.

Q. Were those stocks really bid in in your interest and under your control, in 1870?

A. I gave the auctioneer instructions not to make too great a sacrifice, and to find a few friends who would be present and purchase them. He did so. In a few days afterwards I saw Mr. Palmer and told him he could have the stocks on settlement of account.

Q. Did you really receive the money for the stock sold?

308 A. No money passed. It was customary to wait a few days before the auctioneers collected their bills, and during this time of course the matter was settled, arranged. My great object at that time was to keep control of those stocks; to let Mr. Palmer have the option to take them or not. They were subsequently tendered to him.

Q. State whether you have any South Pewabic which you hold for Mr. Palmer upon the settlement of his account?

A. I have some.

Q. And that is collateral on Mr. Palmer's account?

A. Yes, sir.

Q. How much?

A. I think it is 200 shares.

Q. What do you mean by holding it as collateral?

A. Why, because I supposed up to the time that there was any value upon it, that I had a claim upon it.

Q. For what?

A. For his indebtedness to me.

Q. What is the value of that stock?

A. That is a matter of law I have yet to learn. The shares have no value that I am aware of. I had $100,000 in bonds that I sold for fifty cents on the dollar.

Q. How long had the stock been in that condition?

A. Since 1870 or 1871. I think it was in 1870; if important, I can refer to the books.

*Cross-examinatioon.*

Mr. SEAGER. No. 8 on your account, a charge of $2,500 for a note paid, you have produced a note for it, which is Exhibit one. Further on, No. 10 on the credit side, you credit a note discounted which is Exhibit 7. I suppose that Exhibit 7 was really a renewal note of Exhibit one?

A. There were two notes given for $2,500 each. There were two distinct notes given; one was not given in renewal of the other.

Q. You are satisfied that one is not the renewal of the other?

A. Yes, sir, I recollect; that was the first transaction. I may be mistaken, but that is my recollection that that is the fact. I

309 find with this account—my account—I paid one note on May 18th, $2,500; I then paid another note, Nov. 17th, $2,500, giving him credit for the proceeds of those notes. If you suppose

they were discounted, one was discounted for the payment of the other, there would be so much paid for the renewal note.

Q. I hand you Exhibit No. 14. Do I understand you that the Ossipee stock was distributed on the basis of that allotment?

A. So intended, so far as the parties would take and pay for the same; but you will notice that there were some parties who declined to take it. That which was not disposed of at the full market price, 500 shares, I took and paid for.

Q. How much stock in the original allotment did you have, and how much did Mr. Palmer and Mr. Frue have?

A. Do you want it put into one sum?

Q. Weren't you the same in the original allotment?

A. Could not tell you that; here is the allotment agreed upon. All parties settled on that basis.

Q. This allotment is 2,250 to yourself; 2,250 to Mr. Frue, and 2,220 to Mr. Palmer. Don't you remember that Hall had his proportion increased by some of the other parties contributing to make it up, and of that proportion, Mr. Palmer, who stood the same as yourself and Frue, contributed 30 shares?

A. Whatever arrangements were made between Mr. Hall and Mr. Palmer and others, I know nothing about. Peleg Hall was alloted 250 shares for which he paid, and Mandelbaum 350 shares.

Q. That is not responsive.

A. I cannot reply to that very easy. I know nothing of the transaction connected with your inquiry.

Q. On this allotment, 375 shares were marked C. H. Palmer, Jr?

A. Yes, sir.

Q. Was that treated by Mr. Palmer and yourself as being Mr. Palmer's stock?

A. It was.

Q. And Mr. Palmer was responsible for the assessments in the same way as his own?

310 A. Yes, sir; he gave me instructions about keeping separate accounts—keeping it separate from his own.

Q. You state that Mr. Palmer was paid $5,000 for his services in the Ossipee company?

A. No such evidence given.

Q. You stated that you subsequently sold the Ossipee stock to a gentleman living in Boston?

A. Yes, sir.

Q. That some gentlemen, friends of yours, placed stock in your hands which was sold with yours?

A. Yes, sir.

Q. How much stock did you sell altogether?

A. It is my impression, that is the best of my recollection, I made up the amount by my own stock and that of my friends to 10,200 shares.

Q. How much of that stock was your own?

A. The same as the trial balance shows, 2,250.

Q. How much of it was held by you as trustee?

A. The stock held by me as trustee was that embraced in the list composed by Palmer, Frue, John C. Hodgson, David Hodgson, and William R. Noble.

Q. How much?

A. Somewhere about 7,000 shares.

Q. Was that stock together that was held by you as trustee—what I mean is, was the certificate issued to you in bulk for all of that stock held by you?

A. O, no, sir; I don't remember any certificate was issued; it stood to my credit, and the treasurer was not authorized to issue those certificates until the entire stock was paid in full.

Q. The certificate for the stock in Ossipee, then, was not issued at all; the trustee stock simply stood on the books to your credit?

A. That is my recollection.

Q. Who did you sell to when you sold?

A. I sold to—that is more than I can tell who I did sell the stock to—J. W. Clarke.

Q. For how much?

311 A. For five dollars a share.

Q. Who else contributed stock in that Clarke sale besides the trustee stock and your private stock?

A. That is a hard question to answer without the books.

Q. You have stated that there was seven thousand of contributed shares, two thousand of your own, and the total was 10,000?

A. O, no; you are mistaken; I said the amount with the trustee issued stock was 10,200.

Q. Do you know who the others were?

A. I could tell by going to the Ossipee books.

Q. Can you tell the names of any of them?

A. No, sir.

Q. They were friends of yours?

A. Friends who contributed their stock—they were friends of mine.

Q. You don't know what their names were?

A. No, sir.

Q. Any of them?

A. I could tell by going to the books.

Q. But you don't recollect now the names of any of them?

A. No, sir.

Q. Are you sure there was any other besides the trustee stock and your own?

A. Yes, sir.

Q. With the exception of the 509 shares, was the original allotment of the Ossipee changed, that you are aware of?

A. With the exception of the 509 shares which parties did not take?

Q. With the exception of the 509 shares which other parties did not take and you took, was there any other?

A. Yes, sir; I think D'Aligny's and Wood's, that is I took that stock and made up the whole 509.

Q. You don't understand my question. You have stated that parties to whom stock was assigned here, 509 shares were not taken; that you took them yourself. Were there any other changes in this allotment except that change—where parties did not take their stock?

312 A. The balance not taken by the parties was 509 shares. I can't recollect. I don't want to guess at any of my testimony.

Mr. WALKER: Then you say you can't remember?

A. I can't remember; I don't know; there were 509 shares out of the whole allotment that were not taken, which I assumed on my own responsibility.

Q. You don't know whether there were any other changes on this distribution?

A. I don't recollect any whatever, except those small items which I have spoken of, making 509 shares remaining in my hands after the names of all those parties had been called.

Q. Do you think that is all there was in the allotment?

A. No, sir; I think Mr. Burr had some.

Q. Did all these other people whose names are on here receive the amount of stock set down opposite their names?

A. Precisely so, and they paid for it before they got their certificates.

Q. I hand you Exhibit 19, the Kearsarge allotment; on that allotment Mr. Palmer stands set down for 1,800 shares, his son for 75?

A. Yes, sir.

Q. The shares set down for the son on that allotment were treated in the same way as they were on the Ossipee allotment, so far as Mr. Palmer was concerned; that is, Mr. Palmer was held responsible for the whole 1,875?

A. Yes, sir.

Q. The Kearsarge stock that was sold to Cotton—whose was it?

A. Mr. Palmer's.

Q. Was Mr. Palmer entitled to all the money received of Mr. Cotton on the sales of stock?

A. Yes, sir.

Q. All that came into your hands?

A. Yes, sir.

313 Q. You have on here your credit No. 16, a credit to Mr. Palmer of 500 shares of Kearsarge stock sold Hall & Co., at $4.50, whose stock was that?

A. Mr. Palmer's.

Q. Whose stock was it that Mandlebaum bought?

A. Mr. Mandlebaum did not receive Kearsarge stock from me.

Q. Did he not pay you for Kearsarge stock?

Q. No, sir.
Q. What did Mr. Mandlebaum pay you for?
A. Ossipee.
Q. The stock that was sold to Mr. Mandlebaum, whether Kearsarge, Ossipee, or whatever it might be, whose stock was it that was sold to Mr. Mandlebaum?
A. I can't say.
Q. Didn't you receive the money from Mr. Mandlebaum for the stocks sold to him?
A. Yes, sir.
Q. Did you deliver those stocks?
A. The stocks sold him were Ossipee, for which I received the money.
Q. You received none for the Kearsarge.
A. None that I remember.
Q. Did you receive any from him for Iroquois?
A. From Mr. Mandlebaum?
Q. Yes, sir.
A. Not that I recollect of.
Q. Did you sell Mr. Mandlebaum any Kearsarge yourself?
A. That is more than I can recollect.
Q. Whether you sold any stock of your own to Mr. Mandlebaum?
A. I have no recollection of anything of the kind.
Q. Mr. Mandlebaum paid you money?
A. On the Ossipee stock.
Q. Did he not pay you money on any other purchase?
A. I don't recollect that he did.
Q. Do you know whether he did?
314 A. No, I say I can't say whether he did or not. Not in connection with Mr. Palmer's account. I may be mistaken.
Q. Look at those three items of July 12th, on Exhibit 48, and also the item of September 1st, Mr. Mandlebaum's note of $1,000, making a total of $2,288.21.
A. There is no evidence in that account.

Witness is here handed the account, which he examines.

A. There is no evidence in the account.
Mr. WALTER. Wait a moment. There is no question yet.
Q. Is that a credit for funds received from Mr. Mandlebaum?
A. Yes, sir.
Q. What was that money paid for?
A. Ossipee stock.
Q. How many shares?
A. You have it before you; I don't know.
Q. The shares named in this allotment to him?
A. Yes, sir; of Ossipee stock.
Q. Have you the letter enclosing those drafts?
A. What time was it?

Q. July, 1867.

A. No, sir; all my letters except those of Mr. Palmer's are burned.

Q. Will you look at the entry of June 25th, 1867; what was that $820 for?

A. I could not tell you, except what I told you; I know that no stock of the Kearsarge was transferred to Mr. Mandlebaum by me.

Q. Do you know whom it was received from?

A. Nothing more than this account shows.

Q. Did you receive, in addition to that, on account of Mr. Mandlebaum, a $1,000 which is not charged on this account?

A. Which account do you allude to?

Q. The land account.

A. I received according to that account; I have no other account.

Q. That is all you received from Mr. Mandlebaum?

A. Yes, sir; that I have any knowledge of whatever.

Q. Was there a draft on Mr. Mandlebaum's account on the Douglass land purchase of a $1,000?

315 It is my impression there was; I could not tell you now.

Q. See if you have any memorandum that will enable you to tell?

A. That is the best information I can give you—producing a paper, a memorandum of all the drafts received—I think there is a draft of Mr. Mandlebaum of $1,000; I don't know; I find no memorandum in relation to it.

Q. Have you the letters that contain the remittance credited on that account under date of March 23d, to Chas. H. Palmer—P. Hall, Anthony & Hall, and A. H. Sibley, amounting, in the aggregate, to $4,950, referring to Exhibit 48?

A. No, sir; these only contain remittances from the Lake.

Q. What was that remittance for?

A. I know of no other purpose; it was what they were indebted for Ossipee stock; Ossipee stock was assigned to all of those men.

Q. This is to Hall & Co., Ossipee stock was assigned to them?

A. Yes, sir.

Q. And these drafts, according to your recollection, were for that Ossipee stock?

A. Yes, sir.

Q. Whose stock was it?

A. Whose stock was it?

Q. Yes, sir.

A. Stock they subscribed for on that list; I did not subscribe for it; allotted to them.

Q. Credit No. 16 on your account filed with the Master is for 500 shares of Kearsarge stock, Hall & Co.?

A. Yes, sir.

Q, Was that a part of the $4,950.

A. On this account?

Q. On the land account?
A. No, sir; no, sir; no, sir.
Q. You received $4,950 on the land account that time?
A. Yes, sir.
Q. You credit us $2,250 that day, sale of Kearsarge?
316 A. Yes, sir.
Q. That was a part of the $4,950 you received?
A. It might be, I don't know; I credited that sale of stock.

Objected to.

Q. You have not answered the question; you have credited us with 500 shares of Kearsarge of that date?
A. Yes, sir.
Q. Was that a part of the $4,940 you received?
A. May or may not have been; I can't say.
Q. Where did you get the item you credit us with here, $2,250; I don't mean where did you the money; where did you get the data to get the credit from?
A. It may have all come through the hands of Peleg Hall.
Q. What is that paper you have in hand?
A. That is my account.
Q. That is not the original memorandum?
A. No, sir.
Q. Then I object to your using it; where did you get that item?
A. From the sale of Kearsarge stock which was originally assigned to Mr. Palmer.
Q. When was that first credited to Mr. Palmer, that $2,250?
A. When it was paid by the parties who had the stock.
Q. Where was it credited?
A. In the land account.
Q. Point it out?
A. I don't see it under that date.
Q. Find it, whether under that date or anywhere?
A. What, that particular amount?
Q. Yes, sir.
A. No, sir.
Q. When did you first credit us this $2,250 for the sale of the Kearsarge stock?
A. When did I first credit it, in the land account?
Q. Where did you get the credit which you have given us here; where did you get the figures for it?
317 A. From the stock which these parties sold, from the cost price.
Q. Is it in any of the accounts you rendered before this one filed with the Master?
A. No, sir; I think not. Those particular items.
Q. In this account filed with the Master they are credited the first time?
A. Except in land account.

Q. Show it to us?
A. I can't separate it.
Q. How do you know?
A. Because I know how many shares were assigned.
Q. Why haven't you stated it before on the accounts you have rendered?
A. I have never done it except as to Frue. All these lead were kept in Mr. Palmer's account.
Q. How do you know what was sold to Hall?
A. From copies of the Kearsarge books.
Q. Was any stock sold to Mr. Hall but Kearsarge?
A. Yes, sir; Ossipee.
Q. Any others?
A. I don't recollect.
Q. Any Iroquois sold to him?
A. I think, probable. I could not say one way or the other.
Q. Who made that sale?
A. Mr. Palmer sold the Kearsarge and knew of the Ossipee. He allotted it to Mr. Hall.
Q. Did you have anything to do with Mr. Hall, except through Mr. Palmer?
A. No, sir.
Q. Was any Iroquois sold to Mr. Hall?
A. It is my impression there was.
Q. Whose Iroquois was it?
A. A lot belonging to Mr. Palmer.
Q. Have you credited him with that money anywhere in this account; you charge him with the whole amount of Iroquois, have you credited him when this was sold to Hall?

318 The witness here refers to a paper.

A. I have an indistinct recollection that Mr. Hall had a portion of Iroquois at fifty cents a share.
Q. You have not credited that here?
A. I don't see it; it is quite probale that is an omission.
Q. Did you have any book entries from which you make up this $2,250 with which you credited us here?
A. Yes, sir.
Q. Have you any entry of that credit of 49 hundred odd dollars on Exhibit 48, except on the exhibit itself?
A. No, sir.
Q. Have you any way of determining what items went to make up that amount?
A. Nothing more than what the account shows.
Q. Your No. 18 is a credit of $3,375, 750 shares of Kearsarge sold Sibley & Co.?
A. Yes, sir.
Q. Was Douglass associated with Sibley in his purchase of Kearsarge?

A. I don't know whether he was associated or not. I don't know. I say Sibley, etc., Mr. Douglass was interested in one half of the amount.

Q. It came to you in two separate remittances, did it not; a part from Mr. Douglas and a part from Mr. Sibley?

A. That I can't tell.

Q. Will you look at Exhibit 28, did not that remittance cover one-half of this credit for the Kearsarge, together with another item?

A. There was a mistake—

Mr. WALKER. Here is your account, let me call your attention to it.

The letter is here shown to the witness.

A. It is the same matter, but there were only 375 shares of stock transferred to Mr. Douglass, and why he should have paid for 500 shares I don't know.

Last question read to the witness.

A. The remittance in Exhibit 28 referred to the same item as my credit No. 18.

319 Q. How did you get at that amount which you credit us as No. 18; in the same manner you did the 2,250 credit?

A. Yes, sir; 750 shares at $4.50 per share.

Q. You had no such amount to your credit on our books of such account at all?

A. No, sir, I think not.

Q. And no memorandum. Do you make it up from your recollection?

A. No, sir; I make it up from my trial balance, marked Exhibit 9, and from data of the books of the company.

Q. The credit never was given to us in the form it now appears until you made out this account to file with the Master?

A. Not in the form it now appears, but in the form it appears in the land account.

Q. In the purchase made by Sibley and Douglass on the land account, April 3d, you have Mr. Sibley's note for $2,340.12, and March 29th, Mr. Douglass' note for $2,340.12; were Douglass and Sibley jointly interested?

A. That I can't tell.

Q. Was it not one transaction?

A. That I can't say.

Q. You have credited us here with the stock sold; you say Douglass paid for half of it?

A. No, I don't. I don't know anything about it.

Mr. WALKER. You have already stated that he was associated with Sibley.

A. In my credit he was, but I did not understand his question.

Mr. SEAGER. Mr. Douglass paid for half of the 750 shares of Kearsarge?

A. Yes, sir, I think he did, according to that letter.

Q. You know he did now, don't you?

A. Yes, sir; I am satisfied he did.

Q. That payment, together with the other items amounts to $2,340.12. Mr. Sibley gave you his note for $2,340.12; was that the other half of the joint purchase made by Sibley and Douglass?

320 A. I could not tell you.

Q. What was the note for $2,340.12 given for, dated April 3, 1867? (A paper is here handed to witness.)

A. I can't say; I could ascertain by making up Mr. Sibley's account of what was due on the Ossipee. If he remitted this amount over and above what was due on the Ossipee, I should say that he did.

Q. You don't know?

A. I can't recollect.

Q. Have you credited Mr. Palmer anywhere in your account with the money remitted to you in Exhibit 28, on account of the sale of Iroquois?

A. No, sir.

Q. Isn't he entitled to that credit?

A. Yes, sir; it is my impression; I should say he was; it would appear so by that letter.

Q. In your item No. 17, $2,812.50, credit side, what stocks were sold to J. H. Cotton?

A. Five hundred shares of Kearsarge and 500 shares of Iroquois.

Q. Was the Kearsarge sold at cost?

A. Yes, sir; it was.

Q. What was the Iroquois sold for?

A. It must have been sold for the balance.

Q. Did Mr. Cotton pay any more than cost for the Kearsarge?

A. No, sir.

Q. The stock sold to Mr. Cotton was all Mr. Palmer's, was it?

A. Yes, sir.

Q. Both Kearsarge and Iroquois?

A. Yes, sir.

Q. The stock sold to Mr. Hall was all Mr. Palmer's, was it?

A. Of the Kearsarge?

Q. All but the Ossipee was Mr. Palmer's? If there was

321 any other stocks sold to Mr. Hall except that, it was Mr. Palmer's—you didn't sell Mr. Hall any other stock than Mr. Palmer's, did you?

A. I can't say; I have no knowledge of it.

Q. To your knowledge you sold Mr. Hall no stocks except those that belonged to Mr. Palmer—aside from the Ossipee, I mean?

A. No, sir.

Q. You have spoken of some lands purchased of Williams for the Kearsarge Co.?

A. Yes, sir.

Q. Please state the facts in relation to that purchase again?
A. I can't, any more than is shown in this account.
Q. Who was Williams?
A. Williams was a man in Detroit.
Q. What was the land?
A. The land was in Sec. 5.
Q. Adjoining the Kearsarge?
A. Yes, sir.
Q. Who made the purchase?
A. Mr. Palmer.
Q. How much land was there?
A. That is rather a difficult question. I think there is an undivided quarter in Sec. 5, if I mistake not. I must go to the records.
Q. How much was there paid?
A. Two thousand five hundred dollars I think, and $500 for services, I think.

Mr. SEAGER: We ask leave to amend our account by dropping the amount of $1,200, which we have given on account of Mandlebaum's draft; credit No. 42 in Mr. Palmer's account.

Q. What was the allotment of these different parties in the Iroquois Co.?
A. They were to take the same proportion; same ratio they took in the Kearsarge.
Q. How much did it make you?
A. It made me 2,400 shares in all.
322 Q. How much Mr. Palmer?
A. The same, I think.

Mr. SEAGER. That makes another change necessary in our account. In our debit No. 15, we ask leave to amend that by adding 1-9 additional.

Q. The Adams Mining Co. was a corporation organized by gentlemen, among which were Mr. Palmer, Mr. Frue, and yourself?
A. Yes, sir, and four others.
Q. What was your allotment of stock in the Adams?
A. I could not tell you.
Q. Have you got any way of telling?
A. I have no means of knowing, because there was a large amount allotted to me and subsequently sold on account of the stockholders.
Q. What was Mr. Palmer's allotment?
A. I could not tell you.
Q. Nor Mr. Frue's either?
A. No, sir.
Q. Or your own original allotment?
A. No, sir.
Q. You have charged Mr. Palmer all the way through your account with paying assessments on 1,420 shares as trustee?
A. Yes, sir.

Q. How did you arrive at that amount?
A. By the balance he left in my hands.
Q. How do you know?
A. From the date and credit of the general allotment made to me.
Q. Where is that account?
A. I could not tell you; I have nothing that will throw any light upon that question.
Q. Do you know of anything that will?
A. No, sir.
Q. Where, then, do you get these entries of assessments against him on 1,420 shares?
A. That is the balance that stood in his favor. Origi-
323 nally there was an amount allotted to him, and of the balance that stood on account of that original allotment was 1,420 shares.
Q. How do you know that?
A. I know it by my accounts.
Q. Where are these accounts?
A. In the private account already put in.
Q. You take it, then, from that account, a copy of which you sent Mr. Palmer, and not from any book of entries?
A. Not from any book of entries, no more than from the book of entry of the company. I don't believe there is any evidence in the company's books that will show, because there was a large amount standing in my name as trustee.
Q. This stood in that way; this 1,420 shares stood in your name as trustee?
A. Yes, sir.
Q. Were the certificates issued in that case, or did they just remain standing where you could call for them, on the books of the company?
A. I could not tell. No; I have no recollection.
Q. Your recollection is that stock stood on the books of the company in your name as trustee, but the certificates were never issued?
A. That is my impression.
Q. This stood with Mr. Frue's stock, and the other stock has stood in your name as trustee?
A. I can't recollect so long a period. My recollection is, it stood in my name as trustee, and I sold large amounts, as will appear from Mr. Frue's account and Mr. Palmer's account.
Q. You recollect you kept an account with individuals; they may have stood with you in the account as trustee on the books of the company?
A. Yes, sir.
Q. And this stock was never called for from the company, but stood there in your name as trustee?
A. Yes, sir.

Q. In the purchase of Torch Lake you have put in an
324 exhibit here, No. 77, being part of a letter from Mr. Frue to Mr. Palmer, transmitting an amount of money to be used in the purchase of properties named in it?

A. Yes, sir.

Q. You have also produced drafts drawn by Mr. Palmer in New York, to the order of Mr. Sibley, to pay for the purchase made of Torch Lake and of the south half of the same section on which Torch Lake was organized?

A. Penn, so called; yes, sir.

Q. The letters you have produced show that Mr. Palmer bought 7,000 shares; what became of the other 400?

A. Sold to Mr. Bigelow.

Q. Is the amount placed to his credit?

A. Yes, sir—no; I am mistaken. It is not placed to his credit in this account, for the reason that that amount was never charged for, that is that 400.

Q. If I understand you, then, Mr. Palmer, in your account, is charged for only 1,000 shares of Torch Lake?

A. On his own individual account; that is, his individual allotment.

Q. What has become of the interest in the land described in Exhibit 39—this conveyance of trust from Mr. Sibley?

A. What has become of it?

Q. Yes, sir.

A. Embraced in the Torch Lake Company—deeded to them.

Q. Who sold it to the Torch Lake Company?

A. The owners and proprietors of the interest in Penn.

Q. Well, who sold it to the Torch Lake Company? There were here 12-20 that stood as held in trust for you; did you sell that to the Torch Lake Company, 12-20?

A. By assent of all parties in interest.

Q. By assent of whom? Did Mr. Palmer assent to it?

A. No.

Q. Did Mr. Palmer ever know of it to your knowledge?

A. I think he did; in fact it was carried out.

Q. When?

A. I don't know.

325 Q. When was that sale made?

A. April 8th, 1872, the meeting was held, as appears from the record, at which it was determined by the Torch Lake to purchase the south half.

Q. How long after that before the purchase was made, according to your recollection?

A. O, very soon after that; as soon as the assessments could be collected.

Q. Did Mr. Palmer know of this meeting?

A. That is a matter I can't say.

Q. Have you any reason to believe that he knew of this meeting?

A. I have not.

Q. Have you any reason to believe that he knew of the sale of this property?

A. I have no positive information that I could base this opinion upon; I could not say.

Q. Did you ever inform him?

A. I can't say that I did.

Q. You conveyed all the interest standing in your name as trustee, including that for which you charge Mr. Palmer with Torch Lake, didn't you?

A. Yes, sir.

Q. You received the money for it, didn't you?

A. Money—never charged money.

Q. Answer the question.

A. No, sir; I did not.

Q. Did the Torch Lake pay anything for the property; did they pay for anything?

A. I can't say.

Q. Did you receive anything from the Torch Lake Company for that property?

A. In money?

Q. In money.

A. I can't recollect that I did.

Q. Did you donate it to Torch Lake?

A. There was a division made of the stock between the two interests.

326 Q. Had not the entire amount of Torch Lake been previously issued?

A. Yes, sir; but a portion of it was returned; there was an interchange of stock.

Q. Did you return the stock standing in your name as trustee?

A. Wait a moment; I can't say distinctly; the records show what was done.

Mr. WALKER: If you don't remember, just say so.

A. I have no recollection of those details.

Mr. SEAGER: The resolution reads: "After due examination and discussion it was voted that the treasurer of this company be authorized to purchase the two and a half sections of land adjoining on the south the land of this company, at a price not exceeding $10,000, on thirty days' time." Did they make that purchase in accordance with that resolution?

A. I think they did.

Q. Did they pay $10,000 for the south half of those two sections?

A. No, sir; not to my knowledge.

Q. Is this the only authority given to the corporation to purchase that land on the south half, that you know of?

A. Yes, sir; that is the only authority that I know of; that action was represented by over 12-20 of the shares.

Q. They made the purchase?

A. They made the exchange.

Q. This don't speak of any exchange; it authorizes the purchase, "$10,000 on thirty days' time, and if further time is required, that he be, and is hereby, authorized to issue notes of the company to that amount on sixty or ninety days' time, bearing seven per cent. interest per annum, for the purchase of the land above mentioned. *Voted*, that for the purpose of meeting the requirements of the company, in accordance with the vote thus recorded, and of paying its present indebtedness, an assessment of seventy-five cents per share be levied upon the capital stock of the company, payable on Saturday, the 20th inst., with interest at seven per cent. after that date." Was that assessment levied?

327 A. Yes, sir; levied in form, not in reality.

Q. Haven't you charged us with seventy-five cents on the dollar for that assessment?

A. Yes, sir; and paid it, in the matter of form.

Q. Where have you given us credit?

A. In lands.

Q. Does it appear in the account anywhere?

A. I don't know that it does.

Q. Did you receive $10,000 for the south half, or its equivalent?

A. No, sir.

Q. Was the assessment all paid?

A. It was paid by exchange of stock between the south half and Torch Lake.

Q. What authority was there for an exchange of stock?

A. By the proprietors.

Q. You exchanged stock then with the owners of the south half for their interest in the land, as I understand you; that is, you bought it?

A. Yes, sir; there was an exchange.

Q. That left you in Torch Lake that were in there before, and you gave some of your stock up to come in?

A. Well, it was arranged by mutual consent; I could not tell you about it.

Q. You gentlemen in Torch Lake held 20,000 shares of stock? The owners of south half held lands?

A. Yes, sir.

Q. You made an exchange?

A. Yes, sir.

Q. In what way was it done?

A. By those who paid assessments. They were entitled to an interest in the south half. Those who did not pay their assessments sold their interest in Torch Lake.

Q. Who sold?

A. Individual parties who held the interest.

Q. Sold them how?

A. Returned them, sold them to those who held an interest

328 in the south half and were willing to pay assessments; sold to the stockholders of the Torch Lake, and they paid the assessment, that is to the best of my recollection.

Q. What was done with the money that they paid on assessments; where did the money go to?

A. To the owners of south half.

Q. I understood you no money passed?

A. I say as a general thing no money passed.

Q. Was there any passed?

A. I won't pretend to keep my books in my head.

Mr. WALKER. Answer the question.

A. I can't recollect.

Q. You have charged us here with an assessment in cash on this Torch Lake stock; did you pay that in cash into the treasury?

A. I think not, sir.

Q. How did you pay it?

A. I gave them my interest in south half.

Q. Wasn't that our interest, too?

A. Yes, sir.

Q. Why do you charge us cash when you gave our lands?

A. I can't say.

Q. Is there any explanation?

A. None whatever.

Q. You charge us here over $4,000 for an interest in the south half; what have you to show for it?

A. I will tell you. At that time Mr. Palmer had forfeited his right to the Torch Lake property.

Q. It was treated as forfeited by you at the time?

A. Yes, sir.

Q. And it is for that reason that the credit was not given to us?

A. Yes, sir; it was an interchange of properties. It was carried out in conformity with Mr. Palmer's instructions.

Q. Have you the letter?

A. I have.

Q. Produce it.

A. I can produce.

329 Q. Will you turn to your credit No. 43, on your present account—the sale of Ossipee stock; was Mr. Palmer ever advised of that sale?

A. Was he advised at the time?

Q. Yes, sir.

A. No, sir.

Q. Did he have any knowledge that you are aware of the sale that you made to Clarke?

A. I can't say positively that he did.

Q. No. 44 is for the sale of Adams stock: was he advised of that sale?

A. I can't say that he was.

Q. He was not advised by you, was he?
A. Not to my knowledge, to my recollection.
Q. Turn on your account to debtor Nos. 96, 97, 98, 99; you state that Captain Frue repudiated that purchase?
A. Yes, sir.
Q. When was it?
A. At the trial in Detroit in 1877, I think.
Q. In what way did he repudiate it?
A. Refused to make any payments on it.
Q. Did he repudiate it in any other form—than by his evidence in the case, I mean?
A. I can't say.
Q. Did he ever repudiate it to you by letter?
A. No, sir.
Q. Did he ever repudiate it to you verbally?
A. I can't say.
Q. You have no recollection that he ever did?
A. No, sir.
Q. You have no recollection that he ever repudiated it until at the time of the trial in Detroit?
A. I can't say.
Q. What do you mean by repudiating it in that trial?
A. I mean in the trial of 1877 he repudiated his responsibility in the stock allotted to him.
Q. Repudiated it, then, for the first time, so far as you know, in the trial of 1877, denying his responsibility?
330 A. My impression is that he also refused to acknowledge it in 1874. I think I can produce that in evidence.
Q. You had that evidence printed?
A. I have.
Q. Will you please turn to the portion of it——
A. Oh, I have not got it here.
Q. I mean so you can bring it in here. We will waive any question as to the printed copy, because it is substantially correct. Will you please turn to that part of Mr. Frue's evidence in which you say he repudiated the stock?
A. I can turn to both cases.
Q. You know Mr. Rickard of New York, do you?

McE

A. I do.
Q. Did he ever make you an offer for the south half of those two sections?
A. Not to my recollection.
Q. Never offered you three dollars a share for them?
A. Have no recollection of anything of the kind.
Q. Did he ever for Torch Lake?
A. I have no recollection of any offer being made.

Q. You have no recollection of Mr. Rickard making you an offer for either of the two properties?

A. No, sir.

Q. What papers relating to this matter did you save at the time of the fire?

Mr. WALKER. What matter do you mean?

Q. Relating to the matter of accounts, so far as they concern Mr. Palmer?

A. I saved, I think, most of my letters; I saved the land account and the private account. I saved the trial balance which is here present, which was my guide in settling with all other parties. These were the principal papers.

Q. Did you save copies of letters you sent to Mr. Palmer?

A. I think I did.

Q. Did you save copies of all accounts from time to time sent to him?

A. I think Mr. Walker has them, and they are numbered from one to four—one to five.

331 Mr. WALKER. The question is whether exact copies of those accounts were sent to Mr. Palmer?

A. They were.

Mr. SEAGER. Are they all the accounts that were sent to Mr. Palmer?

A. No, sir; I think not.

Mr. SEAGER. Mr. Walker, will you produce the accounts which Mr. Loring says he has sent copies of to Mr. Palmer, that have not yet been offered here?

Mr. WALKER. I think not at present; I have not examined them.

Mr. SEAGER. You decline, then, to do that at present?

Mr. WALKER. Yes, sir; I have not examined them. I may be willing to produce them after an examination.

Q. You have given some testimony as to that auction sale of 1870, of Henshaw?

A. Yes, sir.

Q. To whom were the stocks bid off at that time?

A. O, I couldn't tell you; several persons.

Q. Don't you know any of them?

A. I can't remember them since the sale was null and void——

Mr. WALKER. Just answer the question.

A. I have no recollection of whom they were.

Q. Did the parties who purchased them purchase at your suggestion?

A. No, sir; I didn't make any engagement; didn't see them.

Q. What were your instructions to the auctioneer?

A. I gave him a limit to bid it in at.

Q. Bid in for you?

A. To be kept in my control if necessary.
Q. Were they all bid in in that way?
A. All bid in.
Q. All bid in by nominal purchasers on your account?
A. Yes, sir.
Q. When were you advised that that sale was invalid?
A. I made it invalid.
332 Q. When were you advised by the counsel that the sale was invalid?
A. Very soon after.
Q. The sale was in September?
A. Yes, sir.
Q. About how long after?
A. I can't say the precise time.
Q. When were you at Detroit?
A. I was in Detroit in October, 1870.
Q. You were there the October following the sale?
A. Yes, sir.
Q. The sale was in the latter days of September?
A. Yes, sir.
Q. You were there, then, very shortly after the sale?
A. Yes, sir.
Q. Prior to that time had you been advised by your counsel to disregard the sale?
A. I can't recollect exactly.
Q. Who were the counsel that advised you the sale was invalid?
A. Those who have been my counsel for forty years.
Q. Who?
A. Sohier and Welch.
Q. Why did they inform you that it was invalid?
A. I did not pursue the strict formalities in giving notice.
Q. Did you know that when you were in Detroit?

Mr. WALKER: He answered that, he said he couldn't say?

A. I couldn't say; I had my doubts about it, and I took immediate steps to control that stock.
Q. What steps?
A. Went and saw the auctioneer to see who the parties were?
Q. Did the auctioneer render you an account of the sale in the regular course of business?
A. Yes, sir; in the ordinary manner.
Q. Were those certificates that were sold at that sale, assigned to the purchasers?
A. My impression is that they were.
333 Q. How long did they stand on the books of the different companies in the names of the parties who bought at that sale?
A. I think it was sometime.
Q. About how long?
A. Would not pretend to say; can't say.

Q. Was it weeks, months, or years?
A. Well, it might have been both.
Q. Might have been years?
A. Yes, sir.
Q. You were informed that the sale was invalid soon after the sale occurred?
A. Yes, sir, I had my doubts about its being so, and I asked advice.
Q. Did you, when you were in Detroit, inform Mr. Palmer that the sale was invalid?
A. No, sir, I did not.
Q. Did you inform him that he could have the stock back if he paid the cost?
A. Yes, sir.
Q. Did you inform him, when you were at Detroit, at that interview, that the stock was under your control?
A. To the best of my recollection, I told him that the stock was placed where he could have it.
Q. Where was the stock at that time, in your safe?
A. I think the certificates were.
Q. Didn't you send Mr. Palmer a copy of that account of sale?
A. Yes, sir.
Q. Didn't you enter it on your book of account as being a receipt of cash on account of Mr. Palmer?
A. I can't say as I did as cash, but it was entered upon my books to the credit of Mr. Palmer.
Q. As the proceeds of the sale?
A. As the proceeds of the sale.
Q. Was there any cash paid at all by any of the purchasers at that sale?
A. I don't think there was; I have so stated before.
334 Q. The stock was all bid off by parties whom the auctioneer procured to bid on your behalf?
A. Yes, sir.
Q. Were the certificates returned to you at the time the auctioneer gave you his bill?
A. Certificates returned to me?
Q. Yes, sir.
A. I don't know that the certificates went into the auctioneer's hands; I gave him a list of the stocks.
Q. Then it did not go out of your hands?
A. Until he advised me who bought them, if then.
Q. When did he advise you of that?
A. Within a few days.
Q. He furnished you, then, in addition to the statement of sale, a list of the parties who bid off the stock at that sale, and their names, and the amounts bought by each?
A. Yes, sir.
Q. Were those parties who bought strangers to you?
A. I don't recollect who they were; I could not say; I only say that I had no previous interview with them before the sale.

Q. They were simply parties procured by the auctioneer?
A. Parties procured by the auctioneer; I don't know who they were.
Q. Did the stock ever go into the hands of the parties who bid it off at the sale?
A. No, sir.
Q. Your recollection is that it never went out of your hands?
A. That is my recollection.
Q. You were at that time managing officer, had under your control all the books of the companies in which there were stocks at that time.
A. That I can't say.
Q. Did you have in 1870 books of the Kearsarge in your possession?
A. I think quite likely there were.
335 Q. The books of the Kearsarge were in your hands in 1870?
A. I think so.
Q. Were the books of the Ossipee?
A. I think they remained in my hands until Mr. Clarke purchased.
Q. The Torch Lake was?
A. I don't think so, until 1872; it then came from New York.
Q. South Pewabic—the books of the South Pewabic were in your hands?
A. I don't know when they were transferred to New York.
Q. In 1870, were not the books of the South Pewabic in your hands?
A. I think so.
Q. Were not the books of the Adams in your hands?
A. I think so.
Q. They were all here, then, except the Torch Lake books?
A. I think so.
Q. Did you issue, in the names of the persons whose names were furnished you by the auctioneer, certificates for the stocks that he reported he had struck off to them?
A. No, sir; I said I did not.
Q. Did you issue certificates after the sale; the auctioneer furnished you a list of the parties who purchased?
A. Yes, sir.
Q. Did you issue on the books of the company certificates to the names furnished you by the auctioneer?
A. Certainly I did.
Q. How did you obtain control of the certificates, if they run in the names of other parties?
A. They assigned them in blank to my order.
Q. The parties who bid them off signed their names on the back of the transfer?
A. Yes, sir.

Q. And left the certificates in your hands?

A. Yes, sir.

336 Q. That was all of the auction they ever had to do with—that was all the connection they ever had with the matter?

A. Yes, sir.

Q. How long did the certificates of the Ossipee remain in that way?

A. Until they were transferred to Mr. Clarke, if I mistake not.

Q. Do you remember who the certificate of Ossipee run to?

A. No, I don't.

Q. It was one certificate was it not?

A. I think not; I am not sure about that; I can't say.

Q. I don't mean when you sold to Clarke, I mean after the auction sale, the pretended sale, the Ossipee stock was all put in one certificate?

A. I don't know.

Q. Were not each of these stocks at that sale bid in by one person at that sale; did not one person buy all the Torch Lake, another all the Kearsarge, another all the Ossipee, and so on?

A. I can't say as to that; I know there was a sale made in the manner I prescribed, further I don't know.

Q. You issued stock to the purchasers?

A. New certificates were issued.

Q. How long did the Kearsarge remain in the name of the purchaser at that sale?

A. I could not tell you.

Q. Down to what time?

A. There is no use saying—it may be a year.

Q. You don't know whether the stock of the Kearsarge has been changed yet?

A. No, sir; I don't.

Q. The Adams?

A. That remains in New York.

Q. Did that remain in the name of the auction purchaser until you sold it in New York?

A. I think it did.

Q. Was the same true in the South Pewabic?

337 A. I think likely; I can't say.

Q. There were no transfers that you remember then?

A. No, sir.

Q. Did you after that sale make any charge on your books in Mr. Palmer's account in any of these stocks?

A. No, sir; I have no recollection that I did.

Q. On your books of account, I mean; did you ever make any charge to Mr. Palmer, or give him any credit in connection with any of the stocks that were bid off at the sale, since the sale?

A. Nothing, except the sale that was made to Clarke.

Q. Was that given to him on your books?

A. It is my impression it was not.

Q. Was there ever any charge, either on one side or the other in your book, indicating that this stock was regarded as Mr. Palmer's —since the sale?

A. No, sir.

Q. Did you ever render any accounts to Mr. Palmer, or have you since the sale?

A. Nothing, I think, since the closing of the sale, except in my own report.

Q. You have never rendered to him any accounts of his, since transmitting to him the auctioneer's report of sale?

A. No, sir.

Examination is here adjourned until 10 a. m. to morrow.

FRIDAY, *July 25th*, 10 *o'clock* A. M.

*Cross-Examination of Witness Loring continued.*

Mr. POST: I desire to take up the matter of the Franklin stock and make some inquiries in relation to it. I think you said that that matter had been settled?

A. Yes, sir.

Q. How?

A. By a sale of the stock by orders of C. H. Palmer and the proceeds remitted, paid over to him.

Q. You mean accounted to him for?

A. I have accounted for everything.

Q. Have you the accounts in which those sales occur?

338 A. No, sir.

Q. Did you send him accounts which embrace those sales?

A. Undoubtedly.

Q. Havn't you the accounts which you sent to him, or copies extending from 1863 to 1865?

A. I have not.

Q. You have no accounts back of 1865?

A. My accounts with Mr. Palmer, if I mistake not, were closed in 1862. My first accounts with Mr. Palmer, in connection with this, if I am correct, were closed in 1862, 1863, and there were no transactions—that is, I think—until a year, I don't know but two years, until the present account commenced.

Q. How was that account settled; how was it balanced?

A. I have just remarked, sir, that I have no accounts on the books in connection with it. I only have a strong impression in my mind that he received all due him on the Franklin stock.

Q. I say, how were those accounts settled?

A. I can't tell you.

Q. Which way was the balance?

A. Altogether in his favor.

Q. And you paid it?

A. Yes, I paid it; paid all the debts due him.

Counsel for plaintiff here shows a paper to the witness.

Q. Did those two papers constitute that account?

A. I have no recollection of ever seeing that account before.

Paper referred to by the witness marked Exhibit 92.

*The Witness.* This other paper I have seen, it is a part of the account, not the whole of it.

Paper referred to by the witness is marked Exhibit 93.

The following are copies of Exhibits 92 and 93:

339 EXHIBIT No. 92.

C. H. PALMER, IN ACCOUNT WITH ELISHA T. LORING.

| | | | |
|---|---|---|---|
| 1859. | | | |
| Ap'l | 8. | To cash paid bill of goods to the mine | $412 05 |
| Feb. | 4. | " cash remitted Mrs. Palmer | 100 00 |
| Mar. | 29. | " cash paid balances due on 100 shares Pewabic stock bought for Frue | 45 10 |
| | 29. | " cash paid balance stock bought for yourself | 21 12 |
| Oct. | 3. | " cash paid Head & Perkins for 50 shs. Franklin, over and above am't received on acc't Ralston, see letter Oct. 5th | 156 25 |
| Dec. | 9. | " cash paid on Franklin stock, assessment and interest, over and above am't rec'd for note dis. at Barnstable bank for $10,000 | 157 24 |
| 1860. | | | |
| June | 11. | " cash paid for renewal of note at Barnstable bank due this day $10,000 (new note due Dec. 14) | 406 66 |
| July | 1. | " balance carried down | 2,222 99 |
| | | | $3,521 41 |

CR.

| | | | |
|---|---|---|---|
| 1858. | | | |
| Nov. | 18. | By draft on Pewabic Mining Co. | $100 00 |
| | 20. | " draft on Pewabic Mining Co. | 200 00 |
| 1859. | | | |
| Ap'l | 18. | " draft on Franklin Mining Co. | 112 05 |
| June | 30. | " cash received by Capt. Emery | 40 00 |
| Aug. | 20. | " cash received at mine | 28 22 |
| Sept. | 8. | " cash received as per acc't Sept. 10 | 230 07 |
| 1860. | | | |
| Mar. | 19. | " cash received on negotiating new note for your acc't $5,000, see letter this date | 226 58 |
| | 27. | " cash received on draft in favor of Wheeler, over and above cost of stock bo't for him | 11 25 |
| Ap'l | 26. | " cash received from excess of Franklin stock, over and above the am't paid on purchasing Pewabic, (see my letter) | 2,548 00 |
| | | By balance of interest | 25 24 |
| | | | $3,521 41 |
| July | 1. | By balance brought down | $2,222 99 |

340 EXHIBIT No. 93.

CHAS. PALMER, IN ACC'T WITH E. T. LORING.

| | | | |
|---|---|---|---|
| 1860. | | DR. | |
| Sept. | 20, | To interest on renewal note due Sept. 22 | $179 17 |
| Oct. | 3, | draft in favor of Pewabic Mining Co. | 3,441 32 |
| Nov. | 13, | assessments on Smelting Works | 2,000 00 |
| | 30, | am't paid on acc't assessments on Franklin stock | 4,500 00 |

| | | | |
|---|---|---|---|
| Dec. | 12, | To assessments on Smelting Works | $650 80 |
| | 22, | assessments on Franklin stock, acc't Captain Frue | 816 48 |
| | 22, | assessments on do. his own account | 1,000 00 |
| | 22, | coms. to C. Merriam acp. on his account | 125 00 |
| | 31, | balance old assessments on Franklin stock | 1,456 91 |
| 1861. | | | |
| Jan. | 9, | draft in favor of J. H. Foster, balance due Pew | 1,635 33 |
| | 18, | cash favor J. H. Foster, balance due Pew | 200 00 |
| | 22, | am't note paid J. N. Fisk, balance due Pew | 5,000 00 |
| Feb. | 15, | am't paid E. D. Brigham, bal. int. Smelt'g Works | 10 20 |
| March | 7, | draft in favor of V. F. Harrison | 260 00 |
| April | 1, | am't paid on acc't assessments on Franklin stock | 3,000 00 |
| | 1, | balance due smelting works mem. and int | 253 88 |
| | 1, | balance due on 40 shares smelting works stock over and above eleven shares Pewabic stock | 15 77 |
| | 16, | am't of draft favor S. P. Brady & Co | 200 00 |
| | 22, | paid C. Merriam commission and int. renewal note $5,000 due Feb. 20, 23 | 228 33 |
| May | 1, | paid C. Merriam commission and interest renewal note due April 27, 30 | 244 58 |
| | 1, | am't draft in favor McConnell & Bacon | 300 00 |
| | 9, | am't of draft in favor of S. P. Brady & Co | 200 00 |
| | 13, | paid R. C. Hooper coms. on draft on his acc't | 75 00 |
| | 16, | paid C. Merriam note on his account | 2,950 00 |
| | 28, | draft in favor of Mrs. C. H. Palmer | 200 00 |
| June | 14, | paid for renewal note $10,650 at Barnstable Bank | 479 25 |
| | 21, | draft in favor of Mrs. C. H. Palmer | 100 00 |
| July | 12, | draft in favor of Gen. Caswell | 50 00 |
| | 24, | paid R. C. Hooper interest and com. on renewal for $5,000 | 281 87 |
| Aug. | 4, | draft in favor of Mrs. C. H. Palmer | 100 00 |
| | 21, | draft in favor of Mrs. C. H. Palmer | 100 00 |
| | 26, | paid C. Merriam on acc't note of $5,000 | 1,000 00 |
| | 26, | paid interest and commission on renewal $4,000 | 182 00 |
| | 30, | paid draft in favor J. H. Foster, agt. P. mine | 614 85 |
| Sept. | 2, | paid C. Merriam an acc't note $5,000 | 1,000 00 |
| | 2, | paid int. and com. on renewal of $4,000 | 182 00 |
| | 20, | draft in favor of Mrs. C. H. Palmer | 100 00 |
| | 7, | balance due on F. assessments and interest | 307 14 |

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| | | | |
|---|---|---|---|
| Oct. | 15, | draft in favor of C. H. P., Jr. | 100 00 |
| | 21, | draft in favor of G. W. Hill | 45 00 |
| | 30, | draft in favor of B. B. Morris | 100 00 |
| Nov. | 5, | draft in favor of G. W. Waldron | 100 00 |
| | 14, | draft in favor of Mrs. C. H. Palmer | 100 00 |
| | 14, | paid R. C. Hooper com. and interest renewal $3,000 | 166 50 |
| Dec. | 17, | am't note paid at Barnstable bank | 10,650 00 |
| | 28, | paid renewal note to C. Merriam $4,000 | 182 00 |
| 1862. | | | |
| Jan. | 4, | paid renewal note to C. Merriam $4,000 | 182 00 |
| | 16, | draft in favor C. H. P., Jr | 100 00 |
| | 25, | paid R. C. Hooper int. and com. on note $6,000 | 333 00 |
| | 25, | paid int. on (500 shs.) assessments to R. C. Hooper | 15 56 |
| Feb. | 3, | draft in favor of R. B. Morris and Brother | 100 00 |
| March | 6, | draft in favor of Mrs. C. H. Palmer | 100 00 |
| | 8, | draft in favor of R. B. Morris | 100 00 |
| April | 1, | draft in favor of R. B. Morris | 100 00 |
| | 5, | cost and assessments on 100 shs. Mes. stocks | 928 19 |
| | 15, | draft in favor C. Pitman & Co. | 165 00 |
| | 21, | draft in favor of R. B. Morris | 100 00 |
| | 25, | paid loan from Pewabic Co., $2,000, int. $22.67 | 2,022 67 |
| May | 1, | note to C. Merriam | 4,000 00 |
| | 5, | paid loan for Pewabic and interest (assess't on F.) | 4,542 08 |

| | | | |
|---|---|---|---|
| May | 7, | To paid note to C. Merriam | $4,000 00 |
| | 7, | amount due R. C. Hooper | 3,000 00 |
| | 7, | am't $6,000 July 28, less 2 mos. 21 days interest | 5,919 00 |
| | 7, | am't of draft in favor | 150 00 |
| | | To balance interest account | 130 01 |
| | | | $70,870 09 |
| | | Extra interest | $65 00 |
| | | To balance acc't brought down | 584 44 |
| | | " check to balance account | 983 89 |
| | | | $1,633 33 |

1860. Cr.

| | | | |
|---|---|---|---|
| July | 1, | By am't due on acc't rendered to this date | $2,222 99 |
| Aug. | 2, | am't rec'd for six shares Franklin stock acc't S. J. R. | 154 50 |
| | 18, | am't of error in funds sent to Wheeler | 6 46 |
| Sept. | 20, | net proceeds 20 shares Franklin sold | 645 00 |
| Nov. | 13, | proceeds of note $2,950 given on his acc't | 2,800 00 |
| | 13, | proceeds of note $5,000 due April 30 | 4,500 00 |
| Dec. | 31, | proceeds C. Merriam accept. $2,500 at 4 mos | 2,350 37 |
| | 31, | proceeds C. Merriam accept. $2,500 at 4 mos | 2,400 00 |

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1861.

| | | | |
|---|---|---|---|
| Jan. | 22, | R. C. Hooper's acceptance $5,000 at 6 mos | 4,639 88 |
| March | 5, | rec'd 40 shares Franklin stock at $24 | 955 00 |
| | 28, | rec'd 16 shares Franklin stock at $24 | 382 00 |
| April | 1, | rec'd 150 shares Franklin stock at 26, 50 at $26½ | 5,175 00 |
| | 1, | am't of my bill paid McConnell & Bacon | 29 89 |
| May | 15, | rec'd for R. C. Hooper accept. $3,000 at 6 mos | 2,924 50 |
| Aug. | 27, | rec'd for my note on his acc't 6 mos. Aug. 14, $2,000 | 1,824 00 |

1862.

| | | | |
|---|---|---|---|
| Jan. | 10, | rec'd of H. & P. 100 shares Franklin stock | 1,962 50 |
| | 14, | " " 200 " " | 4,075 00 |
| Feb. | 20, | " " 100 " " | 2,011 25 |
| March | 20, | " " 200 " " | 4,477 50 |
| | 29, | " " 15 " " at 21 | 313 12 |
| April | 2, | " B. B. 50 " " at 20⅝ | 1,025 00 |
| | 5, | value of 100 shs. Mesmard | 312 50 |
| | 8, | B. B. 25 F. at 20¾, 15 at 20½ net | 1,027 49 |
| | 11, | " 25 at $22, 25 at 21¾ net | 1,087 50 |
| | 16, | H. & P. 100 shares at $21 net | 2,087 50 |
| | 23, | " 75 shares at $21⅛, 25 at $21 net | 2,096 87 |
| | 25, | " 100 " 21½ | 2,137 50 |
| | 26, | B. B. 100 " 21⅝ | 2,150 00 |
| | 26, | " 25 shares Pewabic at $25 | 621 87 |
| | 28, | " 100 shares Franklin at $22 | 2,187 50 |
| May | 1, | " 100 " " at $22¼, 25 Pewabic $25⅝ | 2,875 00 |
| | 1, | " 100 " " 50 at $22⅞, 50 at $23 | 2,281 25 |
| | 2, | H. & P. 50 shares Pewabic at $26 | 1,293 75 |
| | 3, | " 50 " " at $26½ | 1,318 75 |
| | 5, | " 39 " " at $26¾ | 1,038 38 |
| | 6, | " 100 " Franklin, 65 at $24½, 35 at $25 | 2,455 00 |
| | 7, | dividends on 440 shares Portage L. S. W. | 440 00 |
| | | Balance to new account | 584 44 |
| | | | $70,870 09 |
| | | By amount transferred from W. B. F. acc't | $1,633 33 |

Q. You say Exhibit 92 you never saw before?

A. Not to my knowledge. I don't know in whose handwriting it is.

Q. It purports to be an account between you and Mr. Palmer?

A. I don't know [——] the purport of it is. I don't know what it means.

Q. Look, if you please, at the balance with which 93 commences, and see whether it does not commence with the same balance left on the other, is it not a continuation of it?

343 A. Does that purport to give a continuation of the account?

Q. No, sir; perhaps it does.

A. It has the same amount of figures here.

Q. Does it not continue in date from there, too?

A. This account was carried forward to May 7th, 1862.

Q. I will ask you whether the settlement to which you testify, is not the settlement indicated at the foot of 93?

A. Is this the condition which Mr. Palmer received this in?

Q. I am not testifying; that is the check with which you settled the sales of Franklin?

A. Yes, sir.

Q. Were there any sales of Franklin after that account?

A. Not that I am aware of.

Q. Are you able to state how many shares of Franklin Mr. Palmer had before you made any sales?

A. I am not.

Q. Do you know whether he had any shares which were held by you?

A. I do not.

Q. Do you hold any shares of Franklin as trustee?

A. To the best of my recollection, I did.

Q. How many; do you know?

A. I don't know.

Q. I will ask you whether you have in your possession copies of these accounts, Exhibits 92 and 93, these you just looked at?

A. No, sir.

Q. What has become of them?

A. I presume they are in ashes.

Q. You have not had a copy of them since the fire?

A. No, sir.

Q. You don't testify that you did not send Exhibit 92 to Mr. Palmer, do you?

A. I have no recollection.

Q. You don't recollect sending it?

A. If I don't recollect sending it, I have no recollection
344 of the account; I don't know whose handwriting it is. Does it bear my name anywhere?

Q. It bears your name all the way through. An account between you and Mr. Palmer relates to your transactions; perhaps you can

tell by looking at it. Did you have such transactions, sir, as are indicated in that account?

A. I have no recollection of anything connected with the account, although it may have been so.

Q. Have you any recollection of having such transactions as are indicated in the account?

A. I had transactions with Mr. Palmer from about 1858 to 1863.

Q. Those transactions refer to the Franklin and Pewabic stocks, don't they?

A. Yes, sir.

The papers marked Exhibits 92 and 93 are here offered in evidence.

Mr. WALKER. I object to them as incompetent, and if any claim existed in relation to them they are outlawed by the statute of limitations.

Mr. POST. I shall prove them further by Mr. Palmer.

Q. I show to you Exhibit 94, and ask you if you know what that is?

A. It purports to be an account of C. H. Palmer with the Franklin Mining Co. I have no knowledge of the stocks or of the handwriting.

The following is a copy of Exhibit 94:

CHAS. H. PALMER, Esq.,

In account with the FRANKLIN MINING CO.

| 1857. | | | Dr. |
|---|---|---|---|
| June 1. | To 1st installment in No. 1 on | 1,750 | 475 50 |
| Jan. 18. | To bal. am. No. 1 on | 2,500 | 625 00 |
| | | | $1,062 50 |

345 CONTRA.

| 1857. | | | |
|---|---|---|---|
| Oct. 7. | By cash, (N. Clark.) | 50 00 | |
| 1858. | | | |
| Jan. 14. | By cash, (B. N. Leach.) | 75 00 | |
| Feb. 24. | By cash, (A. A. Page, Jr.) | 150 00 | |
| June 10. | By draft | 387 50 | |
| | | | 662 50 |
| | Balance due | | $400 00 |

DEBIT.

| 1857. | | |
|---|---|---|
| June 1. | For asst. on 500 shs. in name of E. N. Wilcox | $250 00 |
| " | For asst. on 1,950 shs. in name of E. T. Loring, Tr. | 487 50 |
| " | For asst. on 1,000 shs., in name of J. W. Haskins | 250 00 |
| " | For asst. on 500 shs. in name of William Frue | 125 00 |
| | | $1,512 50 |

The following shares of stock in the Franklin Mining Co. have been passed to Mr. Palmer's credit, viz.:

| | | | |
|---|---|---|---|
| 1857. | | | |
| April. | By original subscription | 5,250 shs. | |
| Sep. 18. | By E. Farnsworth | 500 | |
| 1858. | | | |
| June 19. | By J. W. Haskins | 1,000 | |
| | | | 6,750 |

Dr.

| | | | |
|---|---|---|---|
| 1857. | | | |
| May 27. | To B. N. Leach | 1,000 | |
| " | To W. Heywood, Tr. | 500 | |
| " | To J. L. Pynchon | 50 | |
| May 28. | To E. L. Loring, trustee | 1,950 | |
| Oct. 7. | To Norman Clark | 200 | |
| 346 | | | |
| 1858. | | | |
| Jan. 14, | To James Wager | 250 | |
| " " | To C. S. Mallory | 50 | |
| Feb. 14, | To A. A. Page, trustee | 300 | |
| | | | 4,300 |
| | Balance to his credit | | 2,450 shs. |

Boston, *Sep.* 8, 1858.

Q. That account leaves a balance to his credit of 2,450 shares, does it not?

A. Yes, sir; it so appears according to those figures.

Q. And it says in your hands March 28, as trustee, 1,950 shares, does it not?

Q. I show you Exhibit 95, is that paper signed by you?

A. I should say it was.

Q. Does that refer to the same 1,950 shares as referred to in that other paper?

A. I will say that I want to see the agreement.

Q. I ask you whether this relates to the same 1,950 shares that appears on Exhibit 94?

A. I presume it does.

Q. Have you the agreement to which that refers; did you receive the shares of which the receipt is hereby acknowledged?

A. I can't say.

Q. Have you any doubt about it?

A. Yes, sir, strong doubts.

Q. How came you to sign the paper?

A. Just read the paper.

Paper read to the witness by his counsel.

A. I understand it; I understand the purport of that.
Q. Did you have the stock?
A. Did I have the stock?
Q. Yes, sir.
A. The paper says I did, in trust for the parties.

347 EXHIBIT 95.

BOSTON, *May 28th*, 1859.

Received of Chas. H. Palmer nineteen hundred and fifty shares in the Franklin Mining Co., in trust for James Davis, Jr., Wm. F. Weld, I. W. Clark, and John T. Hurd, according to written agreement made by the said Chas. H. Palmer on the 3d of February, 1857, with E. T. Loring, for the security and benefit of the above-named parties, under certain conditions and limitations therein contained, and to which this receipt refers.

E. T. LORING.

Q. I ask you if you had it as the paper says?
A. There is no doubt about it, or I would not have signed that paper.
Q. Have you the agreement to which that refers; do you recollect the agreement?
A. Not at all.
Q. Do you know whether the conditions referred to in this receipt were performed?
A. I know nothing about it. If I should state my opinion—
Q. No matter about your opinion if you don't know. Did Mr. Palmer send you certificate No. 8, which stood in the name of E. N. Wilcox for 500 shares; there is the entry?
A. I can't say.
Q. Have you any recollection about it?
A. None at all.
Q. Did he send you 43? 250 shares, which stood in the name of B. N. Leach?
A. I have no recollection of it.
Q. You have no recollection of either?
A. No, sir.
Q. Did Mr. Palmer make any exchange with you of stock of the Franklin Company for Pewabic?
A. I can't say. I have no knowledge of any such transaction; if it ever took place it is gone from me.
Q. I show you that memorandum on an envelove (hands an envelope to witness)?

348 Q. Is that your handwriting?
A. I should say it was.

Paper referred to marked Exhibit 96, of which the following is a copy:

23 bought.
250 exchanged. } One certificate.
407 shares Pewabic st., belonging to C. H. Palmer, Houghton.
Also certificates, 200 shares ex. with E. T. L.
" " 120 bought of E. T. L.
Memorandum in pencil.
200 additional in Ex. 400 Franklin.

Mr. WALKER. The whole of it the question was?
A. I should say it was.
Q. Do you know what that relates to?
A. It has gone from me; I should like to see the letter.
Q. Possibly there wasn't any. It don't purport enclose any letter. It is not addressed as a letter, is it?

Mr. WALKER. No, it is a mere memorandum.

Q. Do you know to what that relates?
A. Allow me to look at it again.

Exhibit 96 handed to the witness.

Mr. WALKER. It is not addressed as a letter; it is a mere memorandum on an envelope.
A. I have no recollection of it whatever.
Q. Are you able to distinguish under the erasure there the pencil memorandum?

Mr. WALKER. No, he cannot. I can't, and know he cannot. There is an erasure there.

Q. Just see if you cannot read out of that "200 additional in ex. 400 Franklin?"
A. No, sir; perhaps some younger people than I can; I cannot.
Q. Are you not able to tell, then, whether than handwriting is yours, the pencil memorandum?
A. No, sir.
349 "200 additional in Ex. 400 Franklin;" you don't know at all what that relates to?
A. Nothing beyond what is conveyed in that paragraph. I have no recollection whatever of the transaction itself. I don't deny my handwriting. I had no knowledge of it.
Q. Now, sir, have you accounted to Mr. Palmer for the sales of the Franklin stock, otherwise than in the accounts which I have put in this morning?
A. That I can't say.
Q. Those accounts were rendered as against the entire transaction, were they not?
A. That I can't say.
Q. Have you sold any of his Franklin since, otherwise than under his instructions?
A. No, sir; to the best of my recollection, I have not.
Q. Do you know whether he received any stocks back at any time?

A. I do not.

Q. His Franklin stock was in your hands, wasn't it.

A. I held Franklin stock, to the best of my recollection, as trustee, in which he was interested.

Q. Well, in which he was interested; didn't you hold it which he owned entirely?

A. My impression is I did not, inasmuch as I held it in trust, because he had not paid for it.

Q. You accounted to him for the proceeds, did you not?

A. To the best of my recollection whatever was sold I accounted to him for.

Q. And you owed him money in addition which you put at the end of account 93?

A. O, there was a balance due him on sale of the Franklin stock.

Q. From the time of that settlement until the time of the opening of this account in 1865, which you have presented here, there was no dealing between you and Mr. Palmer, was there?

A. To the best of my recollection there was not. I could not tell positively.

350 Q. Can you state when that check was paid?

A. No, sir.

Q. It was not paid at the time the account was sent, was it?

A. I have no recollection of it, sir.

Q. You paid assessments for him on Franklin stock; did you not?

A. On such portion as I held in trust, I presume I did.

Q. Didn't you pay them all?

A. I can't say.

Q. You have charged him in this account as for assessments for Franklin, haven't you?

A. I have not looked at the account.

Q. Look at it.

A. I have as charged there. I have no doubt it is correct. (Examining the account.) Yes, sir.

Q. What do you mean by saying that his Franklin stock was not paid for?

Mr. WALKER. I object. He has not said so.

Q. Didn't you say no?

A. No, sir; nothing of the kind.

Mr. WALKER. The witness here asks to be allowed to make an explanation in relation to any transactions that may have occurred between that time and 1865. He thinks possibly there is a single transaction.

The WITNESS. I have stated that no transactions were had between Mr. Palmer and myself from 1862 or thereabouts, to the time of the present accounting; so far as the book accounts are concerned, there are none whatever; but he had some interest in some iron lands, the L'Anse lands, covering this time.

Mr. POST. It was a single transaction by itself.

A. Yes, sir.

Mr. POST. Had no connection with this whatever?

A. No, sir.

Q. Do you know anything of any sales of Franklin stock belonging to Mr. Palmer, and in your hands, other than those mentioned in these Exhibits 92 and 93?

351 A. As I have before stated, I have no recollection of any sales whatever of stock belonging to Mr. Palmer except what is embraced in this account; I might say, either as principal or trustee.

Q. Your memory is not very good, is it?

A. I don't intend to trust much to it when I have any memorandum or books to remind me of it.

Q. What do you say to my question as to whether your memory is good?

A. Disconnected with memorandums, I may be failing, for a long period; but I don't find many with stronger memories as to things that have occurred within the last ten or fifteen years.

Q. Have you any memorandum or account of the Franklin stock matter?

A. Why, I answer no, sir.

Q. Not any?

A. Not any, whatever.

Mr. WALKER. All burned, were they?

A. To the best of my knowledge, all burned.

Q. Were your letter books burned?

A. Why, I just told you all the transactions of mine prior to the fire, burned.

Mr. WALKER. Not prior to the fire, because there are things in the case that were in existence before the fire.

A. I mean things in connection with Mr. Palmer.

Q. You are not thinking what you are saying; you don't mean that all your books and papers connected with Mr. Palmer before the fire are burned?

A. No; the books connected with the transactions in Franklin only are burned.

Mr. POST. Your letters and all memorandums of accounts?

A. Yes, sir.

Q. So if you did have these accounts at the time these were rendered, they would have gone with the others?

A. Undoubtedly.

Q. I refer to 92 and 93?

A. Yes, sir.

352 Q. Then have you given us all the information you are able to give us of the Franklin stock?

A. I have, sir; every iota.

Q. I will ask you some questions now about the land account; have you the memorandum which you mentioned yesterday, of the lists of dates and amounts that the drafts were received from the Lake?

A. I think I have; I don't know whether I have got it here or not.

Q Will you produce it?

A. I guess you will have to defer that, it is at my office.

The following is a list of drafts remitted from the Lake:

| | | |
|---|---|---|
| Nov. 8, 1866 | | $2,000 00 |
| " 10, " | | 10,970 00 |
| " 14, " | | 19,960 40 |
| " 16, " | | 4,988 39 |
| " 22, " | | 2,675 00 |
| Dec. 31, " | | 25,401 48 |
| Feb. 4, 1867, | | 14,480 94 |
| " 14, " | | 11,544 00 |
| " 23, " | | 5,940 93 |
| Mar. 22, " | | 13,438 66 |
| " 30, " | | 2,900 00 |
| | Total | $114,299 80 |

Q. Now will you specify which of those were delivered to you, and which were not?

A. I can do it.

Q. You stated they were not all delivered to you?

A. No, sir, they were not; I can tell you what came to my hands, and produce a memorandum.

Mr. WALKER. State what did not, because that will be shorter, giving the dates.

A. I have not got that here; I have got this letter here; I didn't know I had it.

Q. What letter?

A. A letter to my counsel, showing what did come into my hands.

353 Q. From that can you state?

A. Yes, sir.

Q. Look it over and state what did not?

A. The $6,901.48, remitted Dec. 31, never came into my hands.

Mr. POST. The remittance in that package was $25,401.48?

A. Yes, sir.

Mr. WALKER. Do you mean to say that it never came into your hands at all, or that the sum was delivered to Mr. Palmer?

A. He is speaking of the drafts that did not come into my hands.

Mr. POST. Never came into your hands at all?

A. No, sir.

Q. What is the amount?

A. $6,901.48.
Q. Was that a single draft?
A. That I can't say.
Q. Referring to Exhibit 77, can you state which of the drafts there mentioned did not come into your hands?
A. The one on A. H. Sibley.
Q. Give the amount of that, please?
A. $6,901.48; what I mean by that is, that when Mr. Palmer opened that package, he took that draft from the balance of the drafts, and disposed of it himself; in that sense it never came into my hands.
Q. Who was the package addressed to?
A. Chas. H. Palmer.
Q. Did any come into your hands?
A. No, sir; the rest were endorsed by me.
Q. You have a memorandum on that exhibit in your handwriting, haven't you?
A. I have.
Q. That is not a copy of that letter?
A. Just marked copy by Mr. Hadley.
Q. I am speaking of that memorandum; you have got a memorandum opposite that?
A. Yes, sir.
354 Q. What is it?
A. "Delivered to C. H. Palmer."
Q. Made afterwards, not a part of the original paper?
A. Undonbtedly it is a part of the original paper; it was made there at the time Mr. Palmer took the draft from me.
Q. Made on what?
A. On this copy.
Q. It was not made on the original?
A. Not at all.
Q. You say that memorandum was made on there at the time Mr. Palmer gave you the copy?
A. Mr. Palmer took the original letter, the whole of it, and ordered Mr. Hadley to copy what he wanted copied with these drafts; he then passed all these drafts to me with the exception of $6,901.48.
Q. That don't explain the memorandum; I asked you when that was made?
A. That was made before the drafts came into my hands; that was made at the time the original letter came into my hands.

Mr. WALKER. The original letter didn't come into your hands then?
A. No, sir; it didn't.

Q. And when was that memonandum "delivered C. H. Palmer" made?

A. Made at the time that Palmer delivered that to me; it was made at the time he was in the office.

Q. Do you know whether he saw you make it?

A. That I can't say; it was for my own guidance. When Mr. Palmer took that draft from the rest in the package, I made that.

Q. Now proceed with the rest of them.

A. Of the drafts remitted Feb. 23d, 1867, the following drafts came into my hands: $5,940.93; Mr. Palmer withdrew drafts $4,450; the balance, $1,490.93, came into my hands.

Q. "Palmer withdrew" what do you mean by that?

355 A. I mean Mr. Palmer took these drafts.

Q. Before they came into your hands or afterwards?

A. Of that I wont be positive.

Q. Are you able to tell what draft that was?

A. I can tell by the original letters; I think it was a draft on A. H. Sibley—one for $4,000 and one for $450.

Mr. WALKER. What constituted that sum?

A. Two drafts—one for $4,000 and one for $450.

Mr. POST. Can you tell what drafts they were?

A. They were drafts drawn by the Grand Portage Company on A. H. Sibley—no, they were drafts drawn by the Grand Portage Company; it don't say on whom.

Q. Are you able to tell on whom;

A. No; only from my own impression.

Q. What is your impression?

A. They were drafts on A. H. Sibley, as he was treasurer of the Portage Co.

Q. What else didn't you receive?

A. Subsequently, September, 1867, some six months after the second draft—I see here——

Mr. WALKER. Never mind what you see there; answer the question.

Mr. POST. Under date of Nov. 14th, 1866, a draft of $19,960.40.

A. That never came into my hands.

Q. Never came into your hands?

A. Never came into my hands at all.

Q. Was that all?

A. That is all.

Q. Can you tell what draft that was?

A. Drafts.

Q. Can you tell what they are, sir?

A. They themselves show; I have no other knowledge than that (producing a paper). That is a copy of the original letter which Mr. Palmer gave me. I can only say, that that is a copy handed me by Mr. Palmer, of the drafts at that time.

356 Paper referred to by witness as a copy of the letter shown by Mr. Palmer to witness, containing a list of drafts for-

warded at that date, is marked Exhibit 97. The following being a copy thereof:

HOUGHTON, *Nov.* 14, 1866.

CHAS. H. PALMER, Esq., *Boston, Mass.*

DEAR SIR: Enclosed find the following drafts on account of stock:

| | |
|---|---|
| Franklin No. 4379, at st., favor Enoch Roberts | $130 00 |
| " " 4367, " " " W. R. Noble | 300 00 |
| " " 4369, " " " Geo. Balmer | 125 00 |
| " " 4368, " " " W. Moore | 200 00 |
| Huron " 605, 10 ds. st., favor W. L. Hulbert, clerk | 100 00 |
| Pewabic " 1642, 10 ds. st., favor John C. Hodgson | 150 00 |
| " " 1642, at st., favor Richard Paull | 200 00 |
| Shelden & Colm., No. 230, at st., favor W. R. Noble | 400 00 |
| Quincy, No. 3483, at st., favor Phill. Sherman | 500 00 |
| " " 3489, at st., favor John Morrison | 300 00 |
| " " 3486, at st., favor Wm. Arthur | 400 00 |
| First Nat. Bank Houghton on Cent. Nat. Bank New York, No. 2615, your favor | 17,155 40 |
| Making | $19,960 40 |

Yours respectfully,

WM. R. NOBLE,

Mr. POST: That is correct, is it?

A. That copy was handed to me by Mr. Palmer.

Q. At the time of the date of its receipt?

A. I think soon after.

Q. You say none of those have come into your hands?

A. None of those drafts; no, sir.

357 Mr. WALKER: Why do you want to testify so if that was sent to Mr. Palmer? It may have been a simple memorandum made at the time. Do you remember?

A. O, yes; I remember the drafts were delivered to Mr. Palmer. Mr. Palmer was at my office, otherwise I could not have selected those drafts.

Mr. POST: Those drafts were all to Mr. Palmer's order, you say?

A. Yes, sir; all of them.

Q. I thought you said some of them you endorsed?

A. Mr. Palmer endorsed them in my favor, and I put another endorsement on them for collection.

Q. None of them were drawn in your favor, then?

A. None.

Q. Is that all that did not come into your hands?

A. Of the list?

Q. Yes.

A. I think those I have read to you are; yes, sir.

Q. Do you know what was done with these moneys by Mr. Palmer?
A. I cannot conjecture what was done with them.

Mr. WALKER: Not any conjectures.

A. I know nothing about it of my own knowledge; no, sir.
Q. Do you know whether they were used for the purchase of lands for the land account?
A. I only presume so; I don't know it.
Q. Now, then, on what theory did you keep this land account, Exhibit 48?
A. Upon the theory of crediting Mr. Palmer with all funds that came into my hands from the Lake and from other original stockholders, and charging Mr. Palmer the cost of the stock.
Q. So that it was virtually an account which made him responsible for delinquencies of all the proprietors, didn't it?
A. Well, it was commenced by his approval in that manner.
Q. You have not answered my question.
358 Objected to as incompetent, as it asks for a legal conclusion, and not for the fact.

Question read to the witness.
A. Not at all. The responsibility laid in the liability of the stock, as no stock was issued until the parties had paid their proportion.
Q. You charged him with the entire stock, didn't you?
A. I charged him with the entire stock of the properties.
Q. And with the entire assessments?
A. Yes.
Q. And then you credited him simply with the moneys which were paid in by the parties toward their assessments?
A. Credited him with the money remitted by Frue and the amount paid in by the Boston parties.
Q. So if any failed to pay their proportion of the cost, he was responsible for the balance?
A. If you put a strict construction on it, it might be so. As I remarked before, no stock was issued until it was paid for; and a small number of shares I took and credited Mr. Palmer.
Q. What properties does this land account relate to?
A. It relates to Torch Lake, Iroquois, Penn, Ossipee, and Kearsarge.
Q. Now, then, the entire cost of all those properties is charged in this account to Mr. Palmer, is it not?
A. It was originally.
Q. Is it not now?
A. To the best of my recollection.
Q. And the entire of the assessments?
A. Yes, sir.
Q. And in addition to that, these expenses which you incurred for telegraphing and expressage and other expenses?
A. Yes, sir.

Q. And he is credited only with the amount of money which was paid you on the cost and assessments and sales of stock?

359 A. That is so.

Q. So that, as this account is kept, if any one of the original proprietors was to that extent delinquent, there would be a balance against Mr. Palmer in that account?

A. Well, that is not so in point of fact, for the reason that all delinquent subscribers held stock that was paid for and credited in that account. Mr. Palmer had no responsibility whatever.

Q. Well, I suppose on any of these sales, if there had been profits, you would have had the benefit of those profits and he would not?

A. No, sir; not at all.

Q. Didn't you credit in this account the proceeds simply of sales?

A. For the sales I credited the full amount received.

Q. Are you able to pick out from the account the cost of the different properties?

A. Yes, sir.

Exhibit 48 is here handed to the witness.

A. I can't presume to pick it out.

Q. What was the original cost of the Ossipee?

A. The original cost of the Ossipee was $5.50 a share.

Q. No, no; the original cost of the land; $40,000, was it not?

A. $40,000 and $30,000.

Q. $30,000 was the Douglass purchase; leave that by itself?

A. Yes, sir.

Q. And the Kearsarge?

A. $50,000.

Q. And the Iroquois?

A. $10,000.

Q. Now the first item on the credit side of Exhibit 48, "Oct. 19th, cash of H. Bigelow, $20,000;" the same date, "Draft in favor of J. H. Dennison, $1,000;" the next item, "Nov. 3, the same, $7,000." Further down, "1867, Jan. 9, cash paid on account of lands, $32,000;" same interest added, making $31,392.92."

360 Further on, "March 23d, amount paid Dennison on account of land, $40,000." Look at those and tell me whether those five items were not the purchase price of those three properties?

A. Yes, sir.

Q. Are you able to pick out from that Exhibit the items which went to purchase the Douglass lands?

A. No, sir, I cannot; I know where it went and how it was paid.

Q. How was it paid?

A. It was paid by Messrs. Sibley and Palmer; to meet that payment an assessment of $1.50 was put on the stock.

Q. The question is, how paid?

A. Sibley paid for that land by drafts endorsed by Mr. Palmer.

Q. On whom?

A. On individuals and on bankers in New York.

Q. How was that paid for?

A. Paid by drafts from Sibley, endorsed by Palmer, I suppose; I know nothing further.

Q. Are you able to tell whether the item of Dec. 10th, "cash on lands bought in New York, $3,356.21," was a part of the purchase?

A. Yes, sir; it was wholly. That had escaped my attention. That was the entire which was paid for this land.

Q. How much was paid for the Douglass lands?

A. $25,000 and interest.

Q. Can you find that on the other side of the account?

A. I will be hanged if I will look over those accounts to-day; that draft you speak of was a draft drawn on account of the purchase.

Q. Turn on the other side to March 23d, "cash received, Ossipee, etc., $25,429.17," the third item under the head of March 23d, that relates to the same purchase?

A. Yes, sir.

Q. Then $25,000 was what was paid for the Douglass lands; what was it put into the company for—at what price?

A. An assessment was laid of $1.50 a share.

Q. What was the other five thousand?

361 A. Both for stock.

Q. Was it not $2,500 to pay you; to Palmer $2,500, and you $2,500, for your services?

A. No, sir; not for my services. I did not have one dollar; I never charged any of the companies there that I was engaged in anything outside of my fixed salary.

Q. I ask you, then, again, if that $5,000, the difference between the cost of this land and the assessment, was not provided as a fund for $2,500 for Palmer, and $2,500 for you?

A. No, sir.

Q. Was any part of it to provide a fund for Mr. Palmer?

A. I think Mr. Palmer was paid $2,500.

Q. What for?

A. For his services in negotiating the transaction.

Q. And you were not allowed $2,500 of that $5,000 for any purpose?

A. For no purpose whatever—only my fixed salary by the Board of Directors.

Q. These items of telegraphing, you have got in this account, were with reference to these properties?

A. They were with reference to the speculations which Mr. Palmer was engaged in independent of these companies—independent of the stockholders of these companies.

Q. Then what were they in this for?

A. I kept Mr. Palmer's private account and the land account as the same thing.

Q. Do you say this is Mr. Palmer's land account?

A. Yes, sir; to a limited extent.

Q. To a limited extent, why were the items in the account filed with the Master—I refer to the items in your present account—Nos. 16, 17, 19, 20, 21, 22, 23, 24, 34, 38—I ask you whether those expenses were not incurred on account of the properties embraced in the land account?

A. I can't say that they were.

Q. Can you say they were not?

A. That you will have to go to Mr. Palmer for; I charge him the cost; Mr. Palmer told me to charge it to the account.

362 Q. You made the payments, did you not?

A. I say I have checks that will show.

Q. I say you made the payments?

A. I made the payments.

Q. You put them into the land account?

A. Yes, sir.

Q. They relate to the land account, don't they?

A. Not exclusively.

Q. You must have considered they were in the land account at the time?

A. Undoubtedly.

Q. Because you had a private account separate at that time?

A. Undoubtedly I had so.

Q. Are you able to tell which of the items in this Exhibit 48 are embraced in the items, a list of which you gave us this morning as remittances received from the lake?

A. You have had that before.

Mr. WALKER. Pay attention to the question, and answer.

Question read to the witness.

The WITNESS. I would like to explain.

Mr. WALKER. The witness producess the papers called for yesterday, being accounts of which copies were rendered to Mr. Palmer as he then testified, and they are marked Exhibits 98, 99, 100. These are all the accounts sent Mr. Palmer by the witness, and of which he has retained copies.

## EXHIBIT NO. 98.

CHAS. H. PALMER, IN ACCOUNT WITH E. T. LORING.

1868. DR.

| | | | | |
|---|---|---|---|---|
| Jan. | 1, | To balance as per account rendered | $6,069 60 | |
| | 4, | cash paid for stamps | 2 50 | |
| | 21, | assessments on Hecla stock | 400 00 | |
| Feb. | 11, | cash paid renewal of notes at B. Bank | 405 00 | |
| | 17, | " C. H. Palmer | 100 00 | |
| | 26, | " draft, favor A. H. Sibley | 250 00 | |
| | 29, | " renewal of note at Wareham bank. | 180 42 | |
| 363 | | | | |
| | 29, | " Sohier & Welch for legal services | 6 00 | |
| Mar. | 7, | " renewal of note and stamp | 205 83 | |
| | 19, | " his note | 5,000 00 | |
| April | 15, | " for stock in D. & Lake S. Copper Co. | 2,925 00 | |
| | 18, | " his draft favor of Revere House | 171 61 | |
| | 18, | " his note this day | 5,000 00 | |
| | 25, | " his note this day | 5,000 00 | |
| | 28, | balance of interest to May 1st | 90 39 | |

1868. CR.

| | | | | |
|---|---|---|---|---|
| Jan. | 4, | By cash net amount of his note | | $4,845 84 |
| Mar. | 11, | cash rec'd from H. Bigelow for stock | | 643 17 |
| April | 1, | 2,000 shs. Torch L. Co's stock, $3,000, interest $195 | | 3,195 00 |
| | 13, | cash rec'd from note, less stamp | | 4,846 26 |
| | 20, | " J. H. Cotton for stock | | 1,619 29 |
| | 23, | " his note 4 mos. April 20, less stamp | | 4,847 50 |
| | 28, | " his note 4 mos. April 20, less stamp | | 4,843 75 |
| | | To balance | | 965 54 |
| | | | $25,806 35 | $25,806 35 |
| | | To balance | $965 54 | |

## EXHIBIT No. 99.

CHARLES H. PALMER, IN ACCOUNT WITH ELISHA T. LORING.

1868. DR.

| | | | |
|---|---|---|---|
| April | 30, | To balance | $965 54 |
| May | 1, | cash paid acc't Weed File Co | 211 47 |
| | 4, | " draft Revere House | 200 00 |
| June | 13, | " acc't Weed File Co | 211 47 |
| Aug. | 14, | " his note | 5,000 00 |
| | 14, | " " | 5,000 00 |
| | 20, | " assessment on Ossipee stock, 509 shs | 843 64 |
| | 22, | " his note | 5,000 00 |
| | 27, | " " | 5,000 00 |
| | 31, | " " | 5,000 00 |
| | 31, | balance of interest to date | 12 43 |
| | 31, | balance | 1,006 74 |
| | | | $28,451 29 |

364

1868.

| | | | |
|---|---|---|---|
| Sept. | 1, | To cash paid his note | $5,000 00 |
| | 12, | " " " | 5,000 00 |
| | 28, | " " assessment on 250 shs. S. P. and interest | 756 28 |
| Nov. | 7, | " " Kearsarge and Ossipee | 1,800 00 |
| | 20, | " " draft favor of S. Mandlebaum | 1,200 00 |
| Dec. | 16, | " " his note | 5,000 00 |
| | 19, | " " " | 5,000 00 |
| | 31, | balance of interest to date | 6 27 |
| | 31, | difference in dating interest in acc't to Jan. 1, 1868 | 184 47 |
| | 31, | balance | 4,764 80 |
| | | | $28,711 32 |

CR.

| | | | |
|---|---|---|---|
| July | 1, | By cash dividend D. & L. S. stock, 1,125 shs. | $1,687 50 |
| Aug. | 14, | cash proceeds of note | 4,877 92 |
| | 17, | cash proceeds of note | 4,860 83 |
| | 18, | cash proceeds of note | 4,794 17 |
| | 20, | sundries, 509 shares Ossipee stock, $2,460.17; interest, $181.25 | 2,641 42 |
| | 27, | cash proceeds of note | 4,794 17 |
| | 31, | cash proceeds of note | 4,795 28 |
| | | | $28,451 29 |
| | | By balance | $1,006 74 |
| Sept. | 3, | By cash proceeds of note | 4,860 83 |
| | 12, | cash proceeds of note | 4,843 75 |
| Nov. | 7, | cash am't from Treas. Kearsarge Co. | 3,000 00 |
| Dec. | 21, | cash am't from F. R. Kingsbury | 5,000 00 |
| | 28, | cash am't from F. R. Kingsbury | 10,000 00 |
| | | | $28,711 32 |
| | | By balance | $4,764 80 |

## EXHIBIT No. 100.

C. H. PALMER IN ACCOUNT WITH E. T. LORING.

1869.

| | | | | |
|---|---|---|---|---|
| Jan. | 6, | To cash paid his note | $5,000 00 | |
| | 15, | cash paid his note | 5,000 00 | |
| Feb. | 17, | cash paid renewing note | 200 00 | |
| | 20, | cash paid his note | 5,000 00 | |
| Mar. | 3, | cash paid his note | 5,000 00 | |
| | 20, | cash paid for sale of stock | 25 80 | |
| | 31, | cash Nov. 10, '68, assessment on Adams' stock | 1,424 14 | |
| April | 30, | bal. interest to date | 199 23 | |

365

1868. CR.

| | | | | |
|---|---|---|---|---|
| Dec. | 31, | By balance as of date | | $4,764 21 |
| 1869. | | | | |
| Feb. | 16, | cash rec'd from dis. his note | | 4,801 94 |
| Mar. | 20, | cash rec'd from sale of Hecla stock | | 8,000 00 |
| April | 30, | balance | | 4,283 02 |
| | | | $21,849 17 | $21,849 17 |

| | | | | |
|---|---|---|---|---|
| 1869. | | | | |
| | To balance | | $4,283 02 | |
| Aug. 13, | cash paid his note | | 5,000 00 | |
| 28, | cash paid his note | | 5,000 00 | |
| 31, | balance of interest | | 137 54 | |
| | | Cr. | | |
| | By balance as of date | | ------ | $14,420 56 |
| | | | $14,420 56 | $14,420 56 |
| Aug. 31, | To balance | | $14,420 56 | |
| Dec. 31, | interest balance | | 384 56 | |
| | | Cr. | | |
| Dec. 31, | By balance as of date | | ------ | $14,805 12 |
| | | | $14,805 12 | $14,805 12 |
| Dec. 31, | To balance | | $14,805 12 | |
| 1870. | | | | |
| April 30, | interest balance | | 394 80 | |
| | | Cr. | | |
| 30, | By balance as of date | | | $15,199 92 |
| | | | $15,199 92 | $15,199 92 |
| April 30, | To balance | | $15,199 92 | |
| Sept. 30, | interest balance | | 506 67 | |
| | | Cr. | | |
| 30, | By cash rec'd from sale of collateral stock | | ------ | $6,177 07 |
| 30, | balance as of date | | ------ | 9,529 52 |
| | | | $15,706 59 | $15,706 59 |
| Sept. 30, | To balance | | $9,529 52 | |

Q. You desired to make some statement in relation to your testimony about Torch Lake?

A. Yes, sir; in my remarks of yesterday on Torch Lake, on the manner in which the assessment was made and collected, in
366 view of the transaction I was not aware at the time that they were so clear as they appear to be on examination of the records and accounts. Therefore, I was mistaken in relation to my remarks on that matter, from the fact that it made no impression on my mind, having left it to Mr. Burr. What I stated was not in conflict with the account at all. The representations I made yesterday are founded on the examination of the accounts; but it was not exactly according to the books of the company. I stated there was no money passed, but it appears there was some money passed and credited; in other words, in the room of considering my testimony as valid, you will take the records of the company and Mr. Burr's accounts.

At the request of the witness and of counsel, the above explanation was read to him.

Mr. SEAGER. Was there any money paid by you?

A. I must refer you to the treasurer; it had gone from me; that is where I was mistaken yesterday; I had forgotten; I wish to transfer my testimony that I gave yesterday; I wish to substitute the testimony I gave yesterday, for the record of the company and Mr. Burr's accounts, which he is ready to testify to; that embraces the whole.

Mr. SEAGER. Leaving then, for to-day, the matter of the land account uutil Mr. Loring will have an opportunity to examine it more fully, I will now ask you in relation to some of the stocks sold at that auction sale.

A. Allow me to say I thought that was pretty thoroughly gone into yesterday.

Mr WALKER. It is not necessary for the witness to judge of that.

Mr. SEAGER. Referring to Exhibit 83; at that sale, as appears from the printed notice, were sold 7,285 of the Ossipee, 1,199 of the Kearsarge Mining Co., 1,420 shares of the Adams Mining Co., and 250 shares of South Pewabic; those companies were all formed, if I understand you, on properties that were purchased by different gentlemen; the books of the corporations from the time of their organization being placed in your hands as one of the officers of the respective companies?

367 A. Yes, sir; Mr. Burr was the treasurer of the whole of them.

Q. What office did you hold in all of them?

A. President.

Q. You stated yesterday as to some of these stocks, perhaps as to all of them, that the stock stood on the books of the respective companies in your name as trustee; the certificates had not been issued; was it so in regard to all those stocks?

A. It was to the greater portion of them; I think most all of them.

Q. Was it not so with all of them, that they stood on the books of the company credited to you as trustee; that the certificates had not been issued to anybody?

A. I think all but the Torch Lake.

Q. I don't include Torch Lake in my question; only those four companies organized on property purchased by you?

A. Yes, sir; according to the best of my recollection, I think they stood in my name as trustee.

Q. All of them?

A. Yes, sir.

Q. You sold only 250 shares of South Pewabic?

A. Yes, sir; that is all that was in my name at that time, as trustee, belonging to Mr. Palmer.

Q. On the 11th day of March, 1869, notice was given for the sale of a quantity of stocks belonging to the South Pewabic for non-

payment of assessments; in that notice was "700 shares, E. T. Loring, trustee—"

A. When was the sale?

Q. This is the notice. (Handing a paper to witness.)

A. That is easily explained, sir.

Q. Wait just a moment; were the 250 shares sold at the auction sale a part of the 700?

A. No, sir; well, sir, upon reflection, I think you are right; I think in that was included Mr. Palmer's 250 shares; I subsequently paid the assessment.

Q. At that time this 700 shares stood on the books of the
368 South Pewabic in your name as trustee, and included all the stock for which you were trustee, Mr. Palmer's as well as that of some other persons, didn't it?

A. I thing it did; that is all of which the assessments had not been paid.

Q. The certificates had not been issued, had they?

A. No, sir; not to my knowledge; I can't say about that.

Q. Were they certificates for the 250 shares that were regarded as Mr. Palmer's issued after the auction sale, and then issued to the purchaser at the auction sale by Henshaw Bros?

A. The stock stood in my name as trustee and remained so notwithstanding the sale; my impression is there was no change of certiccates at that time.

Mr. WALKER. Notwithstanding what sale?

A. Notwithstanding the sale had, there was no change on the books of the company; notwithstanding that sale.

Q. The stock was not issued to anybody?

Mr. WALKER. There was a change after the auction sale was there not—issued to the purchaser?

A. That I can't say.

Q. I thought you said, yesterday, certificates were issued to the purchasers?

A. Well, they were, except what stood in my own name.

Q. They all stood in your name as trustee?

A. Well, my impression is—let me state one word—no certificate for the 250 shares was issued by the company until after the auction sale; but a certificate was then issued to the purchaser at the sale for 250 shares; that is so to the best of my recollection.

Mr. SEAGER. The custom then was, in the organization of all these four companies, to place to your credit, on the stock ledger of each company the amount of stock for all the parties for which you were trustee, and from time to time, as they received their stocks or sold them, certificates were issued by the company on your order?

A. That is so.

369 Q. There was 509 shares of Ossipee that were not taken by anybody, and which you ultimately took?

A. Yes, sir.

Q. They were included in the sale to Clarke, were they not?

A. Yes, sir.

Q. In that sale to Clarke was also included the stock that stands marked in Exhibit 14, showing the original allotment, as Lantern and Contingent?

A. Yes, sir; the 509 shares were the balance that stood on the books; the Lantern and Contingent were included in that.

Q. What was that Lantern stock? On the original allotment what was that Lantern intended to designate?

A. You will have to go to Capt. Frue for that.

Q. Capt. Frue is not accessable. On the original allotment there stands 225 shares as Lantern: what was that stock set off for?

A. To meet Capt. Frue's promise of stock.

Q. And called Lantern to designate it.

A. Yes, sir.

Examination was here adjourned until 10 A. M. Monday, July 28.

MOMDAY, *July 28th*, 10 A. M.

*Cross-examination of the witness Loring, continued.*

Cross-examination by Mr. POST:

The WITNESS. The present account which was filed was made up exclusively from vouchers I had before me, except the Mandlebaum draft; that by some means got displaced among papers, and I found it this morning.

Q. Are you able to state what that is for? (handing paper to the witness.)

A. I don't know; I know I paid the money; it may appear when we get Mr. Mandlebaum's account; if anything stands to the credit of Mr. Palmer in the Mandelbaum account it must go to him;
370 if it shall appear that Mandelbaum's account is in excess of the stocks allotted to him, credit shall be given for the same.

Mr. SEAGER. In our accounts we shall omit the Mandlebaum draft for $1,200; the assessments we have charged ourselves, on both the South Pewabic and the Adams. You have offered evidence as to the most, if not all, of these items, and I give you notice of that fact now, that you may give evidence in relation to that.

Mr. WALKER. We have relied upon your credits; and on the other hand we give notice that we shall ask to add to our debtor account the charge of Mr. Palmer's draft paid Mr. Mandlebaum, $1,200, dated Aug. 20th, 1868, being the item No. 42 on complainant's credits.

Defendant's counsel offers in evidence a paper which is marked Exhibit 101, the following being a copy:

$1,200.00. PONTIAC, MICH., *Aug.* 20, 1868.

Three months after date pay to the order of S. Mandlebaum twelve hundred dollars.

Value received, and charge to account of

CHAS. H. PALMER.

To E. T. LORING, 31 Kilby street, Boston, Mass.

Across the face, "Accepted, E. T. Loring." Endorsed Simon Mandlebaum, Pay A. J. Loud, First National Bank of Detroit, Mich. Emery Wendell.

Examination was here adjourned for one hour.

*Cross-examination of the witness Loring continued.*

Mr. POST. Are you able to select from the debtor side of the account, Exhibit 48, the moneys that were put into it from these remittances from the lake?

A. That is the point I have been looking at, and I am not able.

Q. Could you do it if you had time?

A. No, sir, I think not; there is so much confusion in that account.

Q. Take the item on that account, the third item on the debtor side, Nov. 17th. There is an entry of drafts from William F. True, $10,970.

371 Exhibit 48, with the memorandum of the moneys received from True, is here handed to the witness.

Q. Have you the paper from which the items received from Capt. Frue were taken?

A. Yes, sir; certainly I have.

Q. Is that item the same one you referred to in your testimony as to the remittances from the Lake—item of Nov. 10th, $10,970?

A. Yes, sir; it is the same item.

Q. You may state if you please what items that remittance consisted of?

A. Sundry drafts; I leave it for you to read. You have a job before you. I put down simply the remittances.

Paper handed by witness to plaintiffs' counsel.

The WITNESS. The drafts in that remittance were as follows: Isle Royale, $500; First National Bank of Houghton, $8,190; Sheldon & Columbia, $650; the same, $1,000; Quincy, $300; Franklin, $170; the same, $160; making a total of $10,970.

Q. The next item on Exhibit 48 is Dec. 10th. Sundry drafts from Frue, $2,675?

A. Yes, sir, that is the same.

Q. Is not that the same you testified to under date of Nov. 22d, 1866, $2,675?

A. Yes, sir.

Q. Is that in a single draft?

A. No, sir, several; they are as follows: First National Bank of Green Bay, $500; Lewis on Loring, $1,250; Franklin, $375; Minnesota, $500; Huron, $50; Total, $2,675.

Q. Turn next to the item of January 20th: "Sundry drafts from Wm. B. Frue, $18,500." I will ask you if that charge there of $18,500 is not the balance of the remittance of $25,401.48, of December 31st, except the $6,901.48 Sibley draft which you said never came into your hands?

A. Unquestionably that is it; yes, sir, it is.

Q. The particulars of the drafts in that remittance are correctly stated in this Exhibit 77, are they not?

372 A. Yes, sir, I presume there is no doubt about it. You will see it is in the same handwriting; Mr. Hadley's handwriting.

Q. Turn next to the item of February 4th. $14,480.94; state whether that is the same as the remittance of February 4th, 1867?

A. The same.

Q. Does that consist of a large number of drafts?

A. It does.

Q. Will you give the particulars of the drafts in that remittance?

A. They are as follows: First National Bank of Houghton, $4 000; Appleton mill, $1,719.07; Leopold on Leopold, $329.16; Noble on Rickard, $809.43; Noble on Loring, $111.74; Isle Royal Mining Co., $426.76; South Pewabic, ditto, $238.30; Adams, ditto, $138.20; Pewabic, ditto, $200; the same, $170; Quincy, $100; Franklin—several little ones carried out, $300: Franklin and some other little ones, $375; Sheldon and Columbia, $2,246.80; that is comprised of several; Grand Portage, $246.32; the same, $148.24; the same, $2,926.84; total, $14,480.94.

Q. The next is February 13th, an item of $9,954.08; I will ask you whether that item, together with the items of June 27th, on Exhibit 48, being Hecla Mining Co., $150, Hancock, $20, Huron, $641.98, Franklin, $777.94; are not the same as the remittance of February 13th, $11,544?

A. They are the same unquestionably, if the items enumerated foot up that amount.

Q. You may state, if you please, what items in the remittance make up the item in Exhibit 48?

A. Here is $641.98—$160, $335, $80, $366.98.

Q. Now, will you give me the particulars of the drafts of that remittance of February 13th, $11,544.

A. Smelting works, $174.87; the same, $150; the same, $200; John Duncan, $680; James Matthews, $100; First National Bank of Houghton, $8,000; Pewabic Mining Co., $200; Sheldon and Columbia, $411.21; Hancock, $20; Pewabic, $15; Franklin,

373 $777.94; Calumet, $10; Quincy, $25; Hecla, $150; Huron, $160; the same, $35; the same, $80; the same, $366.98; total, $11,544; they are unquestionably the same.

Q. The next item on Exhibit 48 is February 23d, $1,490.93; I will ask you whether that amount, together with the two drafts amounting to $4,450, which you testified never came into your hands, did not make up the remittance of February 23d, about which you testified, of $5,940.93?

A. It does so.

Q. Give me the particulars of that remittance.

A. The letter is dated as follows: February 23; Grand Portage,

$4,000; the same, $450; Adams, $725; the same, $190.93; Jay A. Hubbell, $475; total, $5,940.93.

Q. Come to the next item of April 1st: "Account of W. B. F. from Houghton," being payable in New York, $1,500; I will ask you whether that item, together with the items of April 3d, draft on Ossipee Mining Co., order of W. B. Frue, $4,641.28; South Pewabic, $500; Adams Mining Co., $500; draft on Kearsarge Mining Co., order of W. B. Frue, $3,796.68; South Pewabic, $1,250; Adams Mining Co., $1,250; are not the same as the remittance of March 22d, $13,438.66?

A. Well, sir, if the items you have named make that amount, it is unquestionably true; they are in that remittance, all of them.

Q. Give the items of that remittance?

A. Kearsarge, $4,641.98; Ossipee, $3,796.68; Adams, $500; South Pewabic, $500; First National Bank of Houghton, $1,500; South Pewabic, $1,250; Adams, $1,250; total, $13,438.66.

Q. I will ask you if this Kearsarge draft of $4,641.98 is not the same, which, in the land account, is given under date of April 3d, draft on Ossippee Mining Co.?

A. I have no doubt of it.

Q. Then, whether the draft mentioned in this remittance of March 22d, of Ossippee, $3,796.68, is not the same as charged in the land account as Kearsarge draft?

A. The same, undoubtedly it is.

374 Q. And your explanation is, that the names of these were transposed by mistake?

A. Yes, sir.

Q. And 28 was put where it should have be 98?

A. Yes, sir.

Q. Take next the two items of April 13th; draft from John Senter, $1,400, and the same, draft from William B. Frue, $1,500; state, if you please, whether those are not the same as the remittance under date of March 30th, $2,900?

A. They are.

Q. That remittance shows two drafts the same as they are charged in the land account?

A. Precisely.

Q. Now that closes that account all up, so far as the Frue matters are concerned, especially, except the item of Sept. 1st; amount received from A. H. Sibley, $3,982.70; interest, $110.02; total, $4,092.72; sales of Frue stock—

A. That is a mistake; it should have been a sale of Adams stock.

Q. I will ask you if that is not a part of the Sibley draft of $6,901.48 included in the remittance of $25,401.48?

A. I presume it is; in fact I have no doubt about it.

Q. Are you able to tell when and how the balance of that draft of Sibley's was paid—$6,901.48?

A. Do you mean how it was paid me?

Q. Yes, sir.

A. It was paid in full, but I don't know when or how.

Q. You have no question but what the Sibley draft of $6,901.48 was paid you?

A. No, sir; and canceled.

Q. It was paid, however, in full, ultimately?

A. It was all paid.

Q. All paid you so it came into your hands?

A. All came into my hands, I will say, to the best of my recollection.

Q. I want to ask you now, if you can state what items went to pay for the Douglass land; give us the particulars of the remittance of November 8th?

375 A. It was as follows: $2,000, Noble's draft on Rickard.

Q. Do you know how the remittance of $19,960.40, which you testified the other day never came into your hands, was used, and for what purpose?

A. It was doubtless used for the payment of lands bought of Douglass.

Q. That went into the Ossipee?

A. That went into the Ossipee; I knew nothing of these drafts until Palmer notified me subsequently; they never came into my hands; I never saw them; all went to Mr. Frue.

Q. Give the particulars of the remittance of Nov. 16th—$4,988.39?

A. The First National Bank of Houghton, $3,488.39; smelting works, $900; Pewabic, $100; Franklin, $200; Quincy, $200; Isle Royal, $100.

Q. Were not the Douglass lands purchased for $25,000; whether that was not the amount paid to Douglass, according to your recollection?

A. Yes, sir.

Q. And whether that purchase was not made up of draft on the First National Bank of Houghton for $17,155.40, contained in the remittance of Nov. 14th, and the draft of the First National Bank of Houghton for $3,488.39, in the remittance of Nov. 16th, and a draft of $1,000, Mandlebaum's draft of Nov. 8th, on the paper that Mr. Burr has, together with Mr. Palmer's draft upon you for $3,356.21, which latter item is on the credit side of Exhibit 48 of date Dec. 10?

A. From the representations made I have no doubt it was made in that way.

Mr. WALKER. From the examination made?

A. Yes, sir; from the examination made; on that basis I can safely say I think that is the way it was made up.

Q. Let me call your attention to the item of March 23d, on Exhibit 48, "cash received from the Ossipee Mining Co. for lands, with interest, $25,429.17." I will ask you whether that was

376 not the money paid by the company to the purchasers of the

Douglass lands for those lands, being the purchase money and interest?

A. I have no doubt of it, sir.

Q. And that the $429.17 was the interest paid to the purchasers on the $25,000 in the meantime?

A. Yes, sir; I think there is no question about it.

Q. I will ask you whether, from your present information and examination, you don't think there should have gone into the land account the balance of this remittance of November 14th, $19,960.40, except the $15,155.40, which went to pay for the Douglass land?

A. If I received the drafts.

Q. Don't you think you did receive them?

A. No, sir.

Q. That amounts to 2,805?

A. Yes, sir. I have not the least recollection of ever receiving them. They might possibly have gone into Mr. Sibley's account, and been subsequently settled for by Mr. Sibley.

Q. He did not have anything to do with that?

A. Yes; would with the purchase.

Q. Yes, sir; in the purchase. Then as to the remittance of November 16th. Don't you now think that the balance of, except the draft of $3,488.39 ought to be entered on the land account?

A. It is there.

Q. If not there, ought it not to have gone there?

A. I think it is. I think the whole amount, $4,988, is in the land account.

Q. Is it your judgment then, now, that the whole $19,960.40 should have been in there on the land account?

A. Well, as a matter of form, probably it should have been.

Q. Ought not the thousand dollar remittance in addition to the $2,000 on November 8th, to have been entered on the land account?

Objected to as asking, what is not proved, that there was a further remittance on November 8th.

377 A. I have no recollection of receiving at that time the draft referred to.

Q. Was not such a draft used in the purchase of the Douglass lands?

A. I have no recollection of its being used particularly for that land. I subsequently received from Mr. Mandlebaum a thousand dollars.

Q. Is that in the land account?

A. Yes, sir.

Q. Where?

A. It is there.

Q. That is his note, and more than a year afterwards?

A. I have no recollection of receiving such a draft, none whatever.

Mr. WALKER. Here is another paper, Mr. Loring, which Mr. Burr has just made out—here is the thousand dollars.

The WITNESS. Well, it has gone from me.

Mr. POST. Whether the thousand dollar remittance of November 8th, from the Lake, about which you testified the other day and this morning, ought not to have been credited on the land account, charged to yourself?

A. Yes, sir; I should say it had.

Q. Do you know whether it is so charged?

A. It don't appear in the regular order of dates.

Q. Can you select it out?

A. I can't at present.

Q. The two Grand Portage drafts of $4,000 and $450, part of the remittance of February 23rd, of $5,940.93 was used in the purchase of Torch Lake, was it not?

A. I presume it was; did not come into my hands.

Q. If it was used in the purchase of Torch Lake the stock ought to have come into your hands?

A. That land account was intended—not in that shape. It was used as such undoubtedly.

Q. The stock of the Torch Lake did come into your hands, of that purchase?

A. Yes, sir.

Q. And this $4,450 was used by you in the purchase?

378 Mr. WALKER. It should be allowed on that, undoubtedly. On the Torch Lake he received the title to the stock and the land. Where did he not receive the money he received what was purchased with the money.

Q. Come to October 29th, cash received from H. Bigelow, $10,000, November 3d, $2,000; can you tell what that was for?

A. Contributed towards the payment to the Mineral Land Co., Mr. Bigelow and others furnishing the money on account of the interest of the Boston stockholders to meet the payments on the Mineral Land Co.

Q. Will you turn, in connection with these two items on Exhibit 48, to the item further down of Jan. 9th, "Received from H. Bigelow, $8,000;" and further down, to the item of March 23d, "Cash received from H. Bigelow on account of lands, $2,740.84;" were not those four items all contributions from Mr. Bigelow towards the Ossipee and Kearsarge?

A. Undoubtedly.

Q. And Iroquois?

A. Yes, sir; undoubtedly.

Q. Now will you state, if you please, what stock Bigelow had in the Ossipee?

A. That I will prepare in form. He had whatever is described in the trial balance.

The trial balance is here handed to the witness.

A. Mr. Bigelow was to receive and did receive and pay for 1,600 shares of Ossipee.

Q. The question I ask you, then, is, whether this contribution from Mr. Bigelow—four items on the other side of the account——

Mr. WALKER. I object to the word "contribution."

Q. Well, payments, then, were not the pay for 4,000 shares of Ossipee?

A. No, sir.

Q. In part, I mean?

A. No, sir; they were to pay what was originally assigned to him—1,600 shares of Ossipee.

Examination is here adjourned until 10 o'clock to-morrow.

379 TUESDAY, *July 29th*, 10 o'clock A. M.

*Cross-examination of the Witness Loring continued.*

Cross-examined by Mr. POST:

Q. During the cross-examination of yesterday we passed the Bigelow stock to give you an opportunity to examine and make up a statement of how it ought to be; are you able to do that this morning?

A. I am not.

Q. Are you able to state how the stock of the other parties stands?

A. As exhibited in that land account, Exhibit 48.

Q. You will turn on Exhibit 48 to the items of 1866, October 19th; on the debtor side of the account as made up, to cash received from H. Bigelow, $10,000; November 3d, the next item, ditto, $2,000; 1867, January 9th, cash received from H. Bigelow, $8,000; March 22d, the second item, cash received from H. Bigelow on account of lands, $2,740.84; and state whether those four items are not the moneys paid in by Bigelow on account of these matters contained in the land account, Ossipee, Kearsarge, &c.

A. Yes, sir; they are paid in on account of the three companies.

Q. The total footing of these items is $22,740.84. Now I will ask you whether that money was not paid to apply in the purchase of stocks, as follows: Ossipee, 4,000 shares at $3.33, $13,333.33; Kearsarge, 6,983 shares at 66⅔ cents, $4,655.33; Iroquois, 9,310 shares at 50 cents, $4,655, making a total of $22,643.66?

A. No, sir; it was not.

Q. You are positive about that?

A. No, sir; positively. It was applied on account of his interest and the interest of his associates. He held 4,000 shares.

Q. He and his associates together held 4,000 shares?

A. Originally, but not in the distribution.

Q. Was any other paid for that 4,000 shares than this?

A. O, I can't say; there were probably subsequently further payments.

380 Q. No, I don't mean subsequently; I mean that goes into the land account at this time.

A. That I can't say.

Q. What do you say about the 6,983 shares of Kearsarge for him and his associates?

A. Stands in the same relation.

Q. Those shares were not paid for then, otherwise than by this money that I called your attention to on the other side of the account.

A. They were paid for ultimately by different parties to whom they were alloted.

Q. Were not these payments of Bigelow's which you have credited in the land account, credits upon that stock?

A. Not as I understand the matter.

Q. How was it paid?

A. Paid by those to whom he subsequently assigned the stock.

Q. To you?

A. No, sir; I think not.

Q. To whom?

A. For instance, if he assigus the certificates of stock to other parties, the purchaser would pay it.

Q. Where is it in the land account?

A. It is not there.

Q. Paid to the company, you mean?

A. Yes, sir.

Q. That refers to subsequent assessments, does it not?

A. That I can't say.

Q. He did not pay the original cost and the assessment of two dollars on these lands to anybody but yon, did he?

A. That I can't say.

Q. If it was paid by anybody else, it was not credited in the land account?

A. No, sir.

Q. The original cost should be credited in the land account, and the assessment of two dollars, should it not, to whomsoever paid it?

381 A. No, sir; not as I understand it.

Q. How do you understand it?

A. He should be credited what I received in that land account.

Q. The stock should not be issued to them until that was accounted for to you, should it?

A. To me and the company.

Q. Have you any charge on the credit side of your account, the entire cost of the Kearsarge, Ossipee and Iroquois and the assessments up to two dollars upon the stock of the Ossippee and Kearsarge?

Mr. WALKER. Just understand the question; if you don't understand it say so.

A. I am not able to say, whether the money credited there would apply to this.

Q. Was not that the theory upon which the account was kept?

A. I presume it was; whatever I received I credited.

Q. No, no—that is you have credited yourself with the entire amount of Kearsarge and Ossipee; don't you recollect my calling your attention the other day to the very items which made up the $100,000?

A. I don't view it in that light; I don't remember the price.

Q. Now then there is not any question, is there, in your mind, that the first cost of the Kearsarge, Ossipee and Iroquois, is credited on the credit side—

Objected to as incompetent, asking for a conclusion rather than for a fact.

Q. Calling your attention to the items on Exhibit 48, credit side: 1866, October 19th, by cash paid H. Bigelow, $20,000; same date, draft favor of Dennison, $1,000; Nov. 3d, do. $7,000; Jan. 9th, 1867, cash paid on account of lands, $32,000; and the item of March 23d, amount paid J. N. Dennison on account of land, $40,000; I will ask you whether those five items were not for the first cost of Ossipee, Kearsarge and Iroquois?

A. They were, including the purchase.

382 Q. Be careful; it don't include anything.

A. They were unquestionably paid on account of those stocks.

Q. Were they not paid for that specific thing?

A. Paid for the purchase of three companies?

Q. Yes.

A. Yes, sir; undoubedly; no question about that.

Q. Then I will ask you whether the two dollar assessment on Ossipee is not all credited on the credit side of that account?

The amounts from the exhibit are here read by Mr. Walker to Mr. Burr, who foots them up at the request of the witness.

(Paper handed to the witness, and question read.)

A. That I can't say.

Q. You can't say now, after looking that over?

A. No, sir.

Q. I call your attention, then, to the items in the credit side of that account, under date of March 23d, wherein you charge paid assessment on 2,000 shares of Ossipee at three dollars and a half, with interest added, $7,060.67; do., 501 shares, account of W. B. Frue, $1,768.69; do., 13,424 shares, at two dollars per share, account of C. H. P. and others, $26,848; do., 4,000 shares, at two dollars, on account of H. B., $8,000; do., 75 shares, at two dollars, account of H. D'Aligny, $150; I will ask you if that don't include the entire stock of the Ossipee?

H. That I can't say.

Q. What was the entire stock?

A. 20,000 shares.

Q. Does not that include 20,000 shares?

A. I have not summed it up, my friend.

Q. Sum it up then.

A. 20,000 shares is right.

Q. If that does foot up 20,000, then an assessment on the entire stock of Ossipee, at two dollars, is credited on the credit side of Exhibit 48, two dollars on every share, and $3.50 on some of it—

383 I will change the question; whether that does not show that upon every share of Ossipee stock an assessment is credited there at two dollars per share, and on some of it $1.50 additional?

A. I can't find it.

Mr. WALKER. Why, here, the very items you have been looking over.

A. The account states precisely.

Q. I will repeat the question once more; I ask you whether it does not appear in these items on the credit side of Exhibit 48, that the assessment upon every share of stock of Ossipee at two dollars per share, and some of it at a dollar and a half additional, is there credited in that account?

A. I can't find it there.

Mr. WALKER. You are mistaken.

The WITNESS. O, yes; it is all credited in the land account.

Q. I call your attention to the fact, that on the first two items of those assessments, 2,501 shares of this stock is made to pay an assessment of three dollars and a half; that is so, is it not?

A. Yes, sir; there was an assessment there of three dollars and a half on these shares.

Q. I call your attention to June 25th, 375 shares, an assessment of one dollar and a half on Ossipee to S. Mandlebaum?

A. Yes, sir.

Q. Then the second item below that, "assessment on 250 shares at $1.50?"

A. Yes.

Q. Then under July 1st, the second item 250 shares, and then the next item 1,470 shares, and the next item 75 shares; I have footed those that are below by themselves, and they amount to 2,420 shares; now add to that the 2,501 shares on which you have credited $3.50 a share, it makes 4,921 shares which were credited at three dollars and a half; why are those credited at three and a half and the balance at only two dollars?

Mr. WALKER. Answer it if you can; if you can't say so.

384 A. I can't say.

Q. Then I will ask you this question, was it not a fact that the one dollar and fifty cent assessment was a subsequent matter to the organization of the company?

A. Before the organization was completed the land was purchased.

Q. The Douglass land?

A. Yes, sir, and it was embraced in the assessment.

Q. Was not this assessment of three dollars and a half paid in installments of two dollars at one time and one dollar and fifty cents at the other; was not that the theory on which it was made; was it made as the same assessment, or two assessments?

A. The two dollars and the one and a half.

Q. Yes, sir.

A. My impression is two assessments.

Q. Is it not a fact, that some of these parties took their stock upon paying the original cost and the first assessment of two dollars, and afterwards paid the assessment of one fifty into the company?

A. Not to my recollection.

Last question read to the witness.

A. I will modify that; no, sir, it was not; no stock was issued by a vote of the board of directors until the assessment was paid in full.

Q. That is different from what your statement was the other day; is it not a fact that some of these parties took their stock out of your hands upon paying the original cost and the first assessment of two dollars, and afterwards paid the second assessment of one dollar and a half into the company?

A. It is possible; I have no recollection of it—no recollection of it whatever; If I may be allowed one word here, I think it is proper; there were engagements made at the lake by Mr. Frue on the first assessment, and then a subsequent assessment was made, but no certificates were issued until both were paid.

385 Q. Now, if you will turn on your Exhibit 38, to the date of April 10th, credit side, the assessments upon the Kearsarge; you have credited here as having paid the assessment first, on 5,000 shares Kearsarge stock at two dollars; on 2,211 shares at the same; 750 shares at the same; 500 shares at the same; 1,688 shares at fifty cents, H. Bigelow; 2,239 at fifty cents—that appears to be on Kearsarge assessments, and those shares foot up 12,388; now, where is the balance of the assessment?

A. I have no recollection.

Q. You see below, under date of July 1st, there is a charge of error, an assessment of 1,800 shares; what does that mean; what is that about?

A. I can't say; it was an error discovered subsequent to the entry.

Q. I call your attention to the fact that on the other side of the same account under date of April 11th, you have charged for 1,800 shares of Kearsarge stock at fifty cents a share, $900, which undoubtedly offsets that charge.

A. I can't say positively; I presume it does.

Q. In what way was that an error?

A. I just told you I could not tell.

Q. Where is the balance of the Kearsarge stock, over and above 12,388 shares for which assessments are credited here?

A. I can't tell.

Q. 7,612 shares?

A. I can't tell you.

Q. Is it not a fact, that there were several parties who did not take their Kearsarge stock?

A. Not in Boston.

Q. Well, anywhere?

A. I only know of the fact that some refused to take it, from Captain Frue's testimony, after he had advised us of the sale of 5,000 shares.

Q. Are you able to trace by this land account whose Ossipee stock this was that paid three dollars and fifty cents?

A. No, sir; nothing more than the account shows.

386 Q. Are you able to analyze it, so as to tell whose stock it was that only paid two dollars assessment?

A. No, sir.

Q. Could you do it by taking this trial balance?

A. I might do it in time by going to the company's books; I say no certificates were issued until three dollars and fifty cents were paid.

Q. Now, recurring again to the Bigelow matter, I will ask you whether the item in Exhibit 48, under date of March 23d, "amount paid H. Bigelow to balance his account with C. H. Palmer, $96.99," was not arrived at by deducting from the moneys which I have already called your attention to on this same account on the other side as paid in by Bigelow, being $22,740.84; I say deducting from that amount the prices of stock as I have here made them up, making $22,643.66; was not that the way that item was arrived at of $96.99?

A. The deduction was made under dictation of Mr. Palmer.

Q. It was then, in fact, a reimbursement to Mr. Bigelow for the over payment on his stock?

A. That is the fact, sir.

Q. Isn't that the same item, which you have in your present account filed with the Master, under the same date, and being the item No. 35?

A. Yes, sir.

Q. We will take up the D'Aligny stock now, under date of March 23d, on the credit side of Exhibit 48, there is a charge of an assessment of 75 shares, account of H. D'Aligny, $150?

Q. Yes, sir.

Q. Then on the other side of this Exhibit, under date of April 3d, "Cash received of H. Bigelow, account of stock H. D'Aligny, $253.88." I will ask you whether that is not the money that paid for D'Aligny's stock?

A. A part of it.

Q. It paid it as between him and you in this account?

A. I can explain to you. In the original allotment of
387 stock D'Aligny was allotted 75 shares. The first payment on account of that stock Mr. Bigelow paid. Mr. D'Aligny declined to make any further payments, and Mr. Bigelow paid the amount to me, and said to me, will you assume that stock of D'Aligny's and account for it. I told him I would, and I have accounted to Mr. Palmer for it.

Q. You have accounted to Mr. Palmer for it?

A. I would say that I have accounted to the company for it.

Q. But it don't appear on this Exhibit 48 at all.

A. There is probably an item paid into the company which made up the item.

Q. Not in this Exhibit?

A. No, sir.

Q. It don't enter into this account on either side?

A. I can't say. I have no recollection of it.

Q. Now, can you pick out of this land account your own stocks?

A. In part, (taking Exhibit 48,) well, I don't see it.

Q. I will call your attention on the debtor side of the account, to the item of April 11th, "To cash due on 1,800 shares of Kearsarge stock, at 2-3 per share," which would be $1,200, "with interest," which would be $120, making up that item of $1,320. I will ask you whether that is not your stock?

A. I can't say.

Q. You don't know whether that item was your stock or not?

A. No, sir; I have no recollection about it.

Q. Take the second item below that, same date, "2,250 shares of Ossipee at $1\frac{1}{3}$?"

A. Yes, sir; there appears to be a minute made here. I didn't notice the bracket on the other, but I would say the other was my stock.

Q. I will ask you whether the five entries under date of April 11th, "cash due on 1,800 shares of Kearsarge stock, at 2-3 per share with interest, $1,320; assessment of 50 cts. per share,
388 $900, 2,250 shares Ossipee, at $1\frac{1}{3}$—$3,120; do. assessment of $2 per share, $4,500; and 2,000 shares of Sec. 35 and 36 or 1-10 interest in the property, $2,523.75," are not your stocks—in the land account?

A. Yes, sir; all of them.

Q. Look below to the item of May 1st, on the debtor side of Exhibit 48, "2,400 shares of Iroquois on account of land account of E. T. L.", was'nt that your stock?

A. Yes, sir.

Q. Turn again to the date of April 11th, on the same side of the same account, "cash due for 750 shares, account of E. D. Brigham, with interest, $1,040, do. assessment, $1,500, do. 750 shares of Kearsarge at 50 cts., $375, and a thousand shares of Sec. 35 and 36 at $1\frac{1}{4}$;" whose stocks were those?

A. Mr. Palmer's.

Q. They were Mr. Palmer's stocks that were sold to Cotton?

A. Yes, sir.

Q. Now, that item of $2,812.50 is the same as your credit item, isn't it, No. 17, of the same date in the account, filed with the Master?

A. Yes, sir.

Q. And that was for 500 shares of Kearsarge, and 500 shares of Iroquois, was it not?

A. Yes, sir.

Q. Whether the 500 shares of Kearsarge were not sold at $3.00, and the 500 Iroquois, at $2.50 a share?

A. No, sir.

Q. How was it sold?

A. $4.50 for Kearsarge, and 50 cents for Iroquois.

Mr. WALKER: Your statement don't make it come out even with your account,—hands a paper to the witness—look at it; have you any memorandum that shows that?

At the request of the witness, the last three or four questions and answers are read to him.

The WITNESS: Yes, sir; that is right to the best of my recollection.

389 Mr. SEAGER: Was not this Iroquois sold to Mr. Cotton the same as the Iroquois was to Douglass and Sibley?

A. Not to my recollection.

Q. Then we come to Sibley & Co.'s stock in the land account; under date of April 3d, on the debtor side, "To cash received of A. H. Sibley, $2,340.12; carried out $2,328.33." And the item dated March 29th, "Received from note of C. C. Douglass, $2,340.12; carried out, $2,326.38." I will ask you if those two items were not for stock purchased by Sibley and Douglass?

A. They doubtless were; but whether from stock they bought of Mr. Palmer, or whether that was allotted to Mr. Sibley, I can't say.

Q. What stock was assigned to Sibley?

A. 750 shares of Kearsarge.

Q. Referring to your account filed with the Master, No. 18, of the credit side (handing account to witness), does not that relate to the same transaction?

A. I could not say.

Q. You don't mean that 750 shares of Kearsarge were sold by Mr. Palmer to Sibley and Douglass, do you?

A. No, sir; I don't.

Q. Do you mean that these two items in Exhibit 48, to which I have just called your attention, were what was paid for that stock—the Sibley note and the Douglass note?

A. No, sir; I can't say, for the simple reason—because Mr. Douglass owed me for 750 shares, assigned to him direct.

Q. Is there any credit anywhere from which you get this item, No. 18, in the account filed with the Master, if it don't come from these things?

A. It comes from one lot or the other of those stocks, undoubtedly.

Q. Where is the other on your land account—what do you mean by "the other"—point it out in your account?

A. I can't find it (referring to the account); I can't see it.

Q. It must have been credited on this Exhibit 48, by you at the time it was paid, was'nt it?

390 Mr. WALKER—What credit?

Mr. SEAGER—The money paid for the stock of Palmer.

A. I think quite likely it was; subsequently Mr. Sibley had his stock, which was the same number of shares.

Q. You recollect Exhibit 28, don't you—that letter of Mr. Palmer's enclosing the Douglass remittance of $2,340.12?

A. I want to see Exhibit 28.

Exhibit 28 handed to the witness.

A. After looking at the letter I will say it should be credited to Mr. Palmer, if it is not; the 750 shares assigned to Mr. Sibley in the original allotment was settled for by Mr. Sibley with myself; the 750 shares assigned to Mr. Palmer, which he subsequently sold to Douglass and Sibley, was sold on Mr. Douglass' account.

Q. I will ask you whether this item, No. 18, on the credit side of your account, ought not to be increased, on the theory on which that account is made up, by the addition to it of a thousand shares of Iroquois at two dollars and a half—the proceeds of a 1,000 shares of Iroquois?

Mr. WALKER. He don't say that was Mr. Palmer's stock.

Q. Whether the Iroquois sold to Sibley and Douglass was not Mr. Palmer's Iroquois?

A. It was embraced in the allotment to Mr. Palmer.

Q. Whether Mr. Palmer is not entitled to credit on your account, as you have made it up, in addition to the item No. 18, to a credit on the credit side of your account, filed with the Master, to the proceeds of the sale of a 1,000 shares of Iroquois at two dollars and a half?

A. No, sir.

After an examination of Exhibit 28, the witness further states that he thinks Mr. Palmer is entitled to credit for 500 shares of Iroquois sold to Douglass for $1,250.

Q. I will ask you whether he is not entitled to credit for a like amount sold to Mr. Sibley?

A. No, sir; for the reason that I have no memorandum whatever of receiving that amount; I have no memorandum, no account.

Q. Have you anything to show or anthing that leads you

391 to think that the sale to Mr. Sibley was not a sale of the same amount of stocks as the sale to Douglass?

A. I have no memorandum; I know nothing about it.

Q. Have you the letter of Mr. Palmer's which remitted to you the Sibley note?

A. I can't say.

Q. Will you search and see?

A. If you will give me the date of it.

Q. I can't do it.

A. I have no memorandum whatever to trace it.

Q. I will ask you to search for that letter from Mr. Sibley?

A. I will do so; I want to get at the truth of it.

Q. If the Sibley note of $2,340.12 was not for the sale of the same amount of stocks in the same companies as Douglass, you don't know what it was for, do you?

A. No, sir.

Q. Turn to Exhibit 48, under date of July 12th, debtor side, to the draft on Duncan & Sherman, "Received from John Senter $360.83; do. Dupee, Beck & Sayles, received from S. Mandlebaum $485.05; do. S. P. Brady $443.33, and the item of Sept. 1st; amount received from S. Mandlebaum, his note, $1,000;" making a total of $2,289.21; can you tell what that was paid for?

A. Yes, sir; I have no doubt what it was paid for; it was paid for his allotment in Ossipee, for 375 shares.

Q. Let me call your attention to the two other Mandlebaum items here, under date of June 25th, 1867, draft on Dupee, Beck & Sayles, $820, and do you remember that in the Douglass land matter there was a Mandlebaum draft of a $1,000, which was paid towards the Douglass land?

A. Yes, sir.

Q. You put that $1,000 with this $820 and see if that don't pay for his Ossipee and the interest. Don't you see that is what paid for the Ossipee stock, instead of the items you have just mentioned?

A. I can't say as to that; I will tell you where I am in doubt, aside from the testimony. At that time Mr. Palmer was
392 negotiating land for Mr. Williams in Detroit, and the accounts are mixed up in a manner so I don't know.

Q. That $1,000 that is now in question was received Nov. 8th, wasn't it?

A. I can't say, sir. I don't carry these dates in my head. I admit the correctness of the account.

Q. The date was Nov. 8th when that was received, and it should appear in the land account?

A. It may be that the $1,000 and the $820 pay for the Ossipee stock, but I can't say.

Q. Calling your attention to the items just named, for the sum of $360.83, $485.05, $443.33, and $1,000, footing $2,289.21, can you state what those are for?

A. No, sir; I can't.

Q. Were they not for 375 shares of Kearsarge at two and two-thirds dollars per share, making $1,000, and 500 of Iroquois at two dollars and fifty cents per share, making $1,250, and $39.21 interest?

Mr. WALKER. How can he tell; he has no recollection.

Question read to the witness.

A. I can't say; there is no assignment of Kearsarge stock to Mr. Mandlebaum; none allotted to him.

Q. Did not Mr. Mandlebaum have some Kearsarge?

A. None here.

Q. Don't you remember that he had some Kearsarge?

A. No, sir.

Q. You have the Kearsarge books, have you not?

A. No, sir; they are at Mr. Bigelow's.

Q. I will ask you if that money did not pay for the stocks. If you say it did not, do you know what it did pay for?

A. No, sir.

Q. Do you know whether Mr. Mandlebaum had any Iroquois?

A. On the original allotment he did not have.

Q. But did he not have some Iroquois out of Mr. Palmer's allotment?

A. That is the first instance that I ever knew Mr. Palmer was allotted—

393 Q. No, no; I am speaking of Iroquois. Was not Mr. Mandlebaum entitled to 500 shares of that, the same as Mr. Hall was out of that you call Palmer's allotment of Iroquois?

A. I have no recollection that he owned any stock, as I said before. The Iroquois followed the Kearsarge. If he owned stock he bought it of some other parties.

Q. Well, did he not buy some from Mr. Palmer?

A. I can't say.

Q. Were not these proceeds, which you have here credited in the land account, the proceeds of the sale of the Iroquois stock of Mr. Palmer's?

Mr. WALKER. I object to the question on the ground that it is too ambiguous; not referring to any particular credits.

Q. I refer, in response to brother Walker's objection, to the four items which have just been read off, $360.83, $485.05, $443.33, and $1,000?

Mr. WALKER. The objection is that the question has been fully and distinctly answered, that he don't know.

Mr. POST. I ask the Commissioner to repeat the question.

(Question read to the witness.)

Mr. POST. The question is, whether those items were not in part to pay for Iroquois sold by Mr. Palmer to Mr. Mandlebaum.

A. I have no recollection; know nothing about it.

Q. Can you point out on the other side of this account what offsets them?

A. No, sir; I cannot. Inasmuch as I know nothing of the other side I cannot point it out.

Q. I will ask you if there are any corresponding charges against Mr. Mandlebaum on the other side of the account, Exhibit 48?

A. There is an entry on the other side, the credit side, where I have charged Mr. Mandlebaum one-half assessment 375 shares of Ossipee stock.

Q. This is not Ossipee?

A. I know it is not. That is all the answer I can give you.

Q. There is no other entry then?

394 A. No, sir.

Q. Now, then, I call your attention to Mr. Sibley's stock. Will you turn, if you please, to the next to the last item on the credit side of Exhibit 48. You find that on August 6th there was paid assessments on 1,470 shares of Ossipee, assigned to Sibley?

A. Yes, sir.

Q. Turn on the debtor side of the same exhibit and you will find, on the same date, amount received of A. H. Sibley, 1,470 shares of Ossipee, etc. I ask you whether that was not the payment of Mr. Sibley's stock, 1,470 shares at $4.83\frac{1}{3}$, $7,105, and the amount charged for interest.

A. The answer is that Mr. Sibley was indebted to me at the time some $11,000——

Mr. WALKER. That don't answer the question.

A. What is the question?

Q, The question is whether that sum you are there charged was not the payment for Mr. Sibley's stock.

A. I can't say positively.

Mr. WALKER. Don't that pay for it?

A. It pays for the stock—1,470 shares.

Q. It was received by you from Mr. Sibley, was it not, at that date?

A. I can't say positively one way or the other, because there was a running account between Mr. Sibley and myself at that time.

Q. It was credited to him at that date—it was settled at that date?

A. It was more a matter of form than anything else, because there was an outstanding account; I never received that money.

Mr. WALKER. At that time?

A. No.

Q. But you hold yourself accountable for it?

A. Of course I hold myself accountable to the interest represented in that account.

Mr. POST. I now call your attention to the last item on the debtor side of Exhibit 48: "Amount received, 75 shares of Ossipee
395 stock, allotted to Wood, $374.11." I will ask you whether that was for the price of 75 shares, at $4.83\frac{1}{3}$ and interest?

A. Wood declined to take the stock; Mr. Palmer required me to assume it; I did so at the full cost price.

Q. You say Mr. Palmer required you to do it?

A. Requested me.

Q. I call your attention to the two items on the debtor side of Exhibit 48, of January 7th and 9th: Cash, $6,000 and $4,000——

A. I have admitted the correctness of that once before.

Mr. WALKER. No, you have not.

THE WITNESS. That was made up as a mere matter of form, and it refers to the same funds; the entries in that account and that amount refer to the same fund. I think it was made up simply to satisfy Mr. Palmer that I had received the money.

Q. These two items of $6,000 and $4,000 were paid to you by Mr. Palmer, were they not?

A. Yes, sir; they were paid to me by Mr. Palmer.

Q. Then, on the opposite side of the same account, there is, under the date of Dec. 28th, 1866, an item: "Cash paid to C. H. Palmer, $3,000." That should come out of that, should it not—that is, it should be an offset to that extent of the $10,000?

A. No, sir; not to my knowledge.

(Counsel hands a paper to the witness.)

Q. Now, the question I want to put to you is: Why, as your present account filed with the master is made up, you should not credit upon it the difference between the $3,000 and the $10,000, namely, $7,000, to Mr. Palmer?

A. I have credited Mr. Palmer in the account presented on the $10,000, $6,000, and $4,000, on the previous account. The other account I don't know anything about.

Q. But you don't credit him, on the account filed with the Master, with this $7,000, which you now admit you had?

A. Yes, sir; I admit that I had that money from Mr. Palmer—$7,000.

396 Q. It is nowhere credited on the account?

A. The account filed with the Master, is in error to the amount of $10,000.

Mr. WALKER. Why no, you don't want to say that.

THE WITNESS. Put it in the shape you choose, I will admit the facts.

(A paper is here handed to the witness which he examines.)

THE WITNESS. That appears to be right in that account; I have credited him with $6,000 and $4,000, and charged him $3,000 in Exhibit 48.

Q. I call your attention to Hall & Co.'s stock, under date of March 23d, 1867; you will find four items on Exhibit 48 footing up $4,951.80, consisting of $78.52, $1,183.08, $1,190.20 and $2,500; whether those four items were not for Hall & Co.'s stock?

A. Three of those items relate to the amount due from Hall on Ossipee stock, and the amount that he bought of Mr. Palmer together, I can't say which.

Mr. WALKER. Being the first three.

Q. What does the other relate to?

A. "Cash from Sibley, $2,500."

Q. What is it for?
A. I can't tell you.
Q. Was it not paid on Hall's account?
A. No, sir; not to my knowledge.
Q. Have any knowledge otherwise?
A. I have no knowledge of that.
Q. How came those items in your account to be footed up together?
A. That is no uncommon thing; because it was an accident.
Q. $2,500 don't refer to any amount received from Hall?
A. No, sir.
Q. How do you know?
A. I know from my own knowledge.
Q. What does it refer to, do you know?
397 A. Yes, sir; I know it refers to stock allotted to Hall in the Ossipee company.
Q. Do you know whether Hall had any Iroquois stock?
A. What Mr. Palmer sold to him; Mr. Hall and his friends had 500 shares in Kearsarge at $4.50, and he paid me for 500 of Iroquois.
Q. In the charge on the debtor side of this account, Exhibit 48, there is an item charged for money received from Hall on account of Ossipee as paid; what are embraced in those items, either three or four, as you please?
A. There is none except what is embraced in those three.
Q. Didn't Hall pay you in full for this Iroquois and Ossipee?
A. Paid me in full for the stock which he bought of Palmer.
Q. And state, if you can, what that was.
A. That stock that he bought of Palmer was 500 shares of Kearsarge, and a proportionate part of Iroquois.
Q. What was the proportionate part of Iroquois?
A. It was 50 cents a share.
Q. No, but the number of shares?
A. 250 shares.
Q. Have you any memoranda, papers, books, anything of the kind, that will throw any light on this Hall matter?
A. Nothing more than that (produces a paper). I omitted to subsequently credit Mr. Palmer with what Hall paid me for his proportion of the Iroquois, 50 cents a share.
Q. Hall paid for all his assessments on Ossipee, didn't he?
A. Yes, sir.
Q. And still according to your figures you give, if you leave the $2,500 item out he only paid $2,451.80?
A. I admit that I am indebted for the difference Hall paid for the Iroquois stock, 500 shares, and it should be credited to Mr. Palmer.
Mr. WALKER. Then you do not admit that you received $2,500?
398 A. No, sir; Douglass, Sheldon, and Cotton all paid fifty cents a share, with the exception of Douglass.
Q. That is your recollection about that?
A. Yes, sir.

Mr. POST. I will ask you to trace, if you can, on the credit side of Exhibit 48, the money that was paid for Torch Lake and Penn?

A. Yes, sir.

Q. In order to facilitate it, did it not consist of these items: "1867, February 15th, draft from Sibley for $3,200; February 28, ditto, $5,000: March 2d, ditto, $6,250; April 15th, ditto, $4,500; April 22d, $300; total, $19,250?"

A. Yes, sir.

Q. Now I will call your attention to this: What was Torch Lake and Penn to have cost—total?

A. $1.25 for Penn; $1.50 for Torch Lake.

Q. I don't mean that way.

A. It was at that rate, 20,000 shares each; the amount that it was purchased for, in the land account, $1.50 in one, $1.25 in the other.

Q. What was the aggregate in dollars and cents—$25,500, wasn't it?

A. Thereabouts.

Q. Now, then, it appears in this land account that there is credited to the purchase only the $19,250. How was the balance, $6,250, paid?

A. As to a part of that balance, the two Grand Portage drafts, which were in the remittance from the Lake and charged to me, were used for that purpose.

Q. You don't know how the balance was made up, do you?

A. I don't.

Q. In this land account, Exhibit 48, when it was presented to Mr. Palmer, was any interest reckoned?

A. Not to my knowledge; there may have been some few items.

(A copy of Exhibit 48 is here handed to the witness by complainant's counsel.)

399 Question repeated.

A. I presume it was.

Q. Now, I call your attention to whether the interest on one side was not computed at one rate and the interest on the other side at another rate?

A. It was; I explained that the other day.

Q. What were the two rates?

A. Six and seven, by express agreement of Mr. Palmer.

Q. Six when it was in his favor?

A. Yes, sir.

Q. And seven when against him?

A. Yes, sir; when I was paying 7, 8, 9, and 10, Mr. Palmer was in my office and told me——

Q. I am only asking you the question; if you have any explanation you can give it afterwards. Was not the interest reckoned on one side at one rate and on the other at another rate?

A. Yes, sir; it was.

Q. And it was so reckoned through the whole length of the land account, was it not?

A. Yes, sir—that I can't say.

Q. That is, through the whole length of Exhibit 48? (handing Exhibit 48 to witness.)

A. I don't think it was.

Q. Six on one side and seven on the other?

A. I think not.

Q. I will ask you whether on this paper the red ink items within the ledger lines are not interest items, on both sides?

A. They were probably entered as such.

Q. What balance does Exhibit 48 close at?

A. The total balance here is $13,443.05.

Q. How is that made up—what is the first balance?

A. $11,105.81.

Q. And the other items, making it up to $13,443.05, are what?

A. Are for interest.

Q. At what rate is that reckoned?

400 A. I don't know.

Q. Is that interest cast quarterly added to the principal?

A. No, sir.

Q. You had better look at it; it says so there.

A. No; four months.

Q. Not quarterly; I mean four months; that is so, is it not?

A. Yes, sir; that is so in this account, but in my filed account it is not so.

Q. When you came to Exhibit 91, which is filed here as the continuation of your land account from the first of January, 1868, you start out with the balance of $15,042.19; I ask you whether the difference between the last balance on Exhibit 48, $13,443.05, and this balance, $15,042.19, is merely an accumulation of interest; is not this balance the balance taken from 48, with added interest; the question is whether there are any intervening items except for interest between Exhibit 48 and Exhibit 91?

A. Yes, sir; I think there are?

Q. Can you state what those items are?

A. My land account and Mr. Palmer's private account were not separated until some time after this.

The paper is here handed to the witness.

THE WITNESS. I cannot throw any light upon the subject except what is found in these accounts.

Mr. WALKER. You don't know how the balance in Exhibit 91 is obtained?

A. No, sir; I do not; except on examination.

Mr. POST. What is your explanation of the difference between the balance with which Exhibit 48 closes and the balance with which Exhibit 91 opens?

A. The explanation of the difference?

Q. Yes.

A. I have nothing to give further than as my accounts present it.

Q. Your accounts don't present anything.

A. Then I don't know anything about it.

401 Then that balance should be reduced to $13,000, should it not?

Objected to as not calling for a fact at all, but for inferences merely; also objected to as incompetent.

A. I don't know anything about it.

Q. In Exhibit 90, which is a transcript of Mr. Palmer's account, under date of April 1st, you have a credit to him of cash received from 2,000 shares of Torch Lake and interest, $3,195, and also an item of April 20th, "cash received from J. H. Cotton on 1,000 shares of Torch Lake and interest, $1,619.29." Those items belonged, did they not, in the land account?

A. No, sir; the land account was intended to be confined exclusively to Kearsarge, Ossipee, and Iroquois.

Q. You say they were "intended" to be confined to those three?

A. Yes, sir; so far as the charges were concerned. The credits were not.

Q. Items with reference to Torch Lake and Penn appear upon both sides of Exhibit 48, don't they?

A. Yes, sir; but in different shape. A portion of those stocks was sold; I put it in the names of the parties who bought it in a different form.

Q. But the proceeds of the sale are entered here on Exhibit 48, are they not, and the price paid is charged?

A. No, sir; you cannot find any entries there of Torch Lake and Ossipee, where it is charged in that account.

Q. Didn't I trace out $19,000 here?

A. The amount in drafts, certainly.

Q. And the amount paid by the parties for their stock to you?

A. Yes, sir; all but this 600 shares.

Q. The result is that you kept Torch Lake partly in the private account and partly in the land account?

A. Yes, sir.

Q. This 2,000 shares of Torch Lake was yours, was it not?

A. Yes, sir.

402 Q. Then why in the world was that a credit in any wise to Mr. Palmer?

A. Because I have charged him with the drafts.

Q. Because you had charged him in the land account with the drafts you credit him in his private account with the proceeds?

A. I guess you won't find it in the private account. I have told you times without number that the private account and the land account were merged into one, from December 31st, 1867, to the close of this account.

Q. Up to what time?

A. Up to the close of the whole transaction.

Q. You have two accounts on your books now?

A. Yes, sir; but that was at the time of the sale of the collaterals. I supposed Mr. Palmer's account was closed, and I told Mr. Burr to take it out of the books.

Q. Exhibit 91 shows you had a continuous land account. It commenced with March 31st, 1869?

A. Just say I know nothing further about these land accounts, further than my books. I wish you would put that in, Mr. Commissioner.

Mr. WALKER. You don't mean to say that in the fullest terms?

A. I mean to say that in regard to the questions asked.

Q. You know something about the facts though?

A. To separate these items I cannot do it.

The examination is here adjourned until to-morrow morning at 9:30 a. m.

WEDNESDAY, *July 30th*, 1879, 9:30 a. m.

*Cross-examination of the witness Loring continued.*

Cross-examined by Mr. POST.

Q. On Exhibit 90, the second item on the credit side, $643.17, cash received from H. Bigelow, 400 shares Torch Lake, $643.17, that item I see you have in your account filed with the Master, why was that item left in and the other items of Torch Lake left out?

403 A. That item was put in there, and I subsequently observed it was an error, inasmuch as I had not charged Mr. Palmer with it.

Q. Was not this the 400 shares that reduced the 7,000 shares to 6,600?

A. Yes, sir.

Q. Was that sale made by Mr. Palmer?

A. Yes, sir.

Q. You concede that to be an error, and that it ought to be stricken out?

A. Yes, sir.

Q. Now, then, coming down on that same Exhibit 90, to the item of August 20th, "Cash received for 509 shares of Ossipee, full paid;" that item you have left out of your present account; it belonged strictly in the land account, did it not?

A. Those gentlemen did not take it; it belonged to the land account.

Q. This is the item about which you have testified, of 509 shares which were not taken by some of the parties to whom it was allotted, which you afterwards took?

A. Yes, sir.

Q. As balancing that charge, there is on the other side assessments on Ossipee, three items footing up $800, and then the item of November 6th on the debtor side of No. 90; paid assessments on

Kearsarge, $704.44; paid assessments on Ossipee, $1,095.56; those belong to the land account, don't they?

A. Yes, sir; they properly belong to the land account.

Q. There is, on the debtor side of this Exhibit 90, of date Feb. 29th, a little item of six dollars paid to Sohier and Welch for declaration of trust of A. H. Sibley?

A. Yes, sir.

Q. That is for the declaration of trust put in evidence here, Exhibit 39?

A. Yes, sir.

Q. That charge, then, belonged to the land account, did it not?

404 A. I think it belonged to the land account.

Mr. WALKER. Why, not unless Torch Lake belonged to that account.

THE WITNESS. O, no.

Mr. POST. I see you have it in your account filed with the Master, and I suppose it is conceded it should not go there?

Mr. WALKER. The land account is intended to embrace only Ossipee, Kearsarge and Iroquois. I suppose Mr. Palmer would not be entitled to pay only a portion of it.

THE WITNESS. Strike it out.

Q. I think you were asked whether Mr. Mandlebaum had any shares of the Kearsarge, were you not?

A. Except it appears on the trial balance.

Q. I think you have already testified that if Mr. Mandlebaum had any Kearsarge, it was Mr. Palmer's sales of Kearsarge?

A. No, sir; I testified that from Mr. Palmer's allotment of Kearsarge, Douglass & Sibley had 750 shares, Cotton 500 shares and Hall 500 shares.

Q. And you think Mr. Mandlebaum did not have any?

A. No, sir.

The further examination of the witness on this point, is deferred until the books of the Kearsarge Company are produced.

Q. You have copies of all letters inclosing the remittances of the Lake, about which you have testified, havn't you?

A. Yes, sir.

Q. And your testimony with reference to those remittances was taken from those originals or copies?

A. Yes, sir.

Mr. SEAGER. Our explanation of this Kearsarge matter is this: the 750 shares standing on the original allotment in the name of A. H. Sibley, he declined to take; Mr. Palmer subsequently induced Mr. Douglass to take half and Sibley half, and 375 were issued to Douglass and 375 to Sibley; Mr. Loring on his account, has credit-

405 ed us with the proceeds of the sale of 750 shares of stock which does not belong to us, but are the shares allotted on the original allotment; further, we never had allotted but 1,800 shares;

the 75 shares that the witness speaks of as being allotted on our account for C. H. P. Jr., may have been the original intention, but it was never carried into effect.

Mr. WALKER. It is admitted by the defendant, that the above statement in relation to the 750 shares of stock originally allotted to Sibley, is correct, and that Mr. Palmer is entitled to credit for 375 shares of Kearsarge stock transferred to Mandlebaum, and not included in the account filed with the Master.

Mr. WALKER. Now that is correct, is it?

Mr. LORING. Yes, sir; that is correct.

Mr. SEAGER. I have here the transcript from your stock account with the Kearsarge; the last entry is, I think, Sept. 29th, 1870, 1,199 shares issued to Wainwright and Armory.

A. Yes, sir.

Q. That was issued after the auction sale?

A. Yes, sir.

Q. On the Ossipee books I found an entry of 7,285, issued to William F. Binder, of the same date, which closed out your Ossipee trustee account; that was the stock sold at the auction sale?

A. Yes, sir.

Q. At that time, there stood on the Adams books 1,420 shares in your name; that was stock sold at the auction sale?

A. Yes, sir.

Q. And the South Pewabic stood 700 in your name as trustee, and 250 was sold out of the 700, was it not? (handing a paper to the witness, Exhibit 84;) look at that; it stood in your name as trustee?

A. Yes, sir; but it was not sold at the auction sale by Henshaw Bros.

Q. You mean the balance of the 700 was not sold?

A. Yes, sir.

Q. You testified that the manner in which the land account was kept was objected to by the parties in June, 1867?

406 A. Yes, sir.

Q. Where was that?

A. At Lake Superior.

Q. Did you change the manner in which it was kept after that time?

A. No, sir; not for some time afterwards.

Q. What time did you change it?

A. I did not change it until the close of the year, December 31st.

Q. 1867?

A. Yes, sir.

Q. You have said that Captain Frue repudiated the allotments to him; I will ask you what allotments those were that he repudiated?

A. I refer to the assignment made to him by Palmer on 35 and 36—Torch Lake stock.

Q. Where did he repudiate them?

A. He referred to them in 1874; stated that he had seen Mr. Palmer's account, and after, in 1877, he repudiated them altogether.

Mr. WALKER. O, no; you are mistaken entirely; Mr. Palmer repudiated them in 1877.

Mr. SEAGER. Have you the printed testimony?

A. I have.

The witness here produces excerpts from the testimony given in 1874, in the case of Frue *vs.* Loring, and the same is marked Exhibit 102, and is offered in evidence, the following being a copy:

*William B. Frue. Plaintiff, recalled in his own behalf.*

(Page 104, 1874.)

Q. Has Mr. Loring furnished you any stock in Torch Lake, or upon sections 35 or 36?

A. He has furnished me no stock in Torch Lake or Penn.

Q. On 35 or 36?

A. That included 35 and 36; 35 and 36 comprises the Torch Lake and Penn.

(Page 100, 1874.)

407 Had you any arrangement or understanding with Palmer before this letter was written, as to the purchase of these lands mentioned in it?

A. No; that is, before sending the money I had requested, or, rather, urged, to go on in joint account—that is, Loring and several others to go in and purchase this land, and I think I requested a certain interest in it; but during the time there were no movements made as to satisfy me, and I was inclined to think they wouldn't purchase; hence I gave an express order to purchase.

(Page 105, 1874.)

Q. What portion of the land mentioned in this letter was in stock?

A. The Torch Lake.

Q. There is not anything said about Torch Lake; it says Sec. 24 and Penn.

A. Penn and Torch Lake mean the same thing.

(Page 99, 1874.)

Q. Have you not charged some of the moneys on your bill of particulars in this case?

A. Mr. Palmer disobeyed my orders; did not buy the land or stock, as ordered, but passed the money into the hands of Loring, as on the former agreement or arrangement made with him.

Q. Don't you know, as a matter of fact, that the very land mentioned in this letter was purchased by Palmer, and he drew on Loring for the money to pay for it?

A. I don't know that he drew on Mr. Loring for the money.

Q. Do you know that it was purchased?

A. I believe it was purchased—that is, I have reasons for believing; I know from Mr. Loring's statement of accounts that have fallen into my possession.

Q. That he furnished money?

A. That they furnished money.

Q. That Mr. Loring furnished money to pay for this very
408 land?

A. That the land was purchased; I don't know that Loring furnished the money.

*Testimony of William B. Frue.*

(Pages 36 and 37, 1877.)

Q. I understand you to say that the money that you did send forward to Mr. Loring and forming a part of this account was sent forward upon other accounts and for other purchases?

A. If the thing had been carried out the money would have been used, and I would have been in debt to Mr. Loring.

Q. I am asking now what it was sent forward for, no matter what it was used for?

A. For a contemplated purchase in section 24.

Q. Then you sent forward portions for other purposes than for the payment of your interest in these corporations, did you?

A. Yes, sir; I do not know but I ought to qualify my answer in regard to sending money forward to Loring for other purposes; there was a letter sent forward to Mr. Palmer, requesting him to invest certain moneys, or a certain amount of money, in an outside concern, which I had reason to believe that the parties, meaning Mr. Loring, did not intend to invest in, and I requested a certain amount of money to be invested by Mr. Palmer.

Q. Then you sent forward——

A. It was not invested.

Q. I understand you; you don't know how that was; it was the conduct of other parties; now how much money did you send forward distinctly for another purpose than upon these corporations?

A. It was only twelve thousand dollars; there was a letter—if I can explain—there was a letter, which enclosed certain moneys sent forward by Mr. Noble, and I after qualified the amount about twelve thousand dollars.

Q. Did you not send forward upwards of twenty-five thou-
409 sand dollars over your own signature, to be applied to another and a different purpose?

A. I did not send the money myself.

Q. Send drafts, I mean?

A. I did not send the drafts myself; not a single draft to Mr. Palmer; that is, myself, direct; Mr. Noble handled all the drafts that were sent forward.

Q. Those were the instructions under which $25,000 and odds of the moneys now charged in your account were forwarded to Mr. Palmer, were they not?

A. Yes, sir.

*Cross-examination continued.*

Q. Are the papers which you hold in your hand slips from the printed testimony of Mr. Frue, given in 1874, at that trial?

A. A part from the trial of 1874 and a part from the trial of 1877.

Mr. WALKER. Why, no; they are not.

Q. Do these extracts cover those portions of the testimony of Mr. Frue, in which you claim that he repudiated the allotments to him of Torch Lake and Penn?

A. They are a part of the testimony, from which I infer that he repudiated it.

Q. They are those portions which have been selected by you for the special purpose of showing that he did repudiate?

A. O, no; they are selected as bearing upon his repudiation.

Q. Were they not selected in reply to my request to you on a former day of the examination that you should refer me to those portions of the testimony where Captain Frue repudiated the purchase?

A. They were a part of the testimony referred to; I did not intend it as a full reply by any means; I suppose there is other testimony—there is other testimony.

Q. This is the testimony that to your mind had the strongest bearing upon that question?

A. No, sir; not by any means.

410 Q. Will you bring it to me, if you have it?

A. It is in my counsel's hands.

Q. Will you bring me any other printed portion of the testimony of those trials that does bear upon this question, other than these?

A. I should have to consult my counsel before I answer that question.

Q. You have testified that Mr. Palmer is really responsible for the stock marked "C. H. P. Jr.," on the Ossipee allotment, havn't you?

A. That is my opinion, inasmuch as there is no account opened with Charles H. Palmer, Jr., and Charles H. Palmer, Jr., never made any payment for stock.

Q. If any payments had ever been made by him, they should have been passed to the credit of Mr. Palmer.

A. If payments were made by Palmer, Jr., they should have been placed to the credit of Mr. Palmer; (a paper is here handed to the witness;) I think I cannot be mistaken in this matter; if I am, I am open to correction.

Q. I hand you a receipt; will you please examine it? (Witness examines a paper handed him.) In whose hand-writing is the body of that receipt?

A. Mr. Burr's.

Q. Whose signature is it?

A. It is mine.

Q. Did Mr. Chas. Palmer, Jr., pay you that money?

A. The receipt is made out in his name, but it has gone from my mind entirely.

Q. Did he pay you that money?
A. I presume he did.
Q. What is the amount?
A. $620.56.
Q. What is the date?
A. 15th day of October, 1868; it has slipped my memory, and in some way or other has escaped entry; no intention about it.

Mr. SEAGER. The item which is proven, is defendant's
411 No. 19, on the account filed with the Master, on the debtor side, and it should be amended, undoubtedly, to correspond with the receipt.

Q. You have testified that Mr. Palmer authorized the sale of south half of 35 and 36 to Torch Lake; do I understand you right?
A. No, sir; he was not advised or consulted about it.
Q. The time that he recommended it, in the letter you referred to, was written in October of the year previous?
A. About the time that he purchased the stock.
Q. You have testified that since the sale spoken of in the testimony as the auction sale, you tendered these stocks to Mr. Palmer; when and where was that tender made?
A. In Detroit.
Q. At the interview you have spoken of, in the fore part of October, 1870?
A. Yes, sir; I can't remember the year.
Q. The same year as the sale?
A. Yes, sir.
Q. You have charged us in your account with a number of items on account of the assessments for 1,420 shares of Adams stock; who did that belong to?
A. To Mr. Palmer, and held by me as collateral.
Q. Did Captain Frue have any interest in it that you know of?
A. In that 1,420? not that I know of.
Q. I have to correct you again; (handing a paper to the witness marked Exhibit 103.)
THE WITNESS. How does this bear any evidence as emanating from me?
Q. In whose hand-writing is it?
A. It is now clear; he was in my office at the time.
Q. What was his name?
A. Frank Atwood.
Q. He was in your employ?
A. He was in my employ at that time.
Q. It is in the same hand-writing that some of the other accounts that have been introduced are, is it not?
A. Yes, sir.
412 Q. Those entries on Exhibit 103 would indicate——
A. Not entries.
Q. Yes; entries on Exhibit 103 would indicate that Mr. Frue held 420 shares of Adams stock at that time.

A. It would appear so from the memorandum; yes, sir.

The following is a copy of Exhibit 103:

Wm. B. Frue to C. H. Palmer, for assessments on 420 shares of Adams stock, paid by Elisha T. Loring.

| | | | |
|---|---|---|---|
| 1867. | | | |
| April 15. | Assessment of two dollars ($2) per share | ---------- | $840 |
| Oct. 10. | " three " ($3) " | ---------- | 1,260 |
| 1868. | | | |
| Oct. 26. | " one dollar ($1) " | ---------- | 420 |
| | | | 2,520 |

Q. At that time, if he held 420 shares, must it not have been a part of this 1,420?

A. Undoubtedly.

Q. The Adams and South Pewabic companies were dissolved and a new company formed in their place, using the properties of both, taking the name of the "Atlantic?"

A. Yes, sir.

Q. The Ossipee Company was dissolved, and a new company formed in its place, in connection with some other property, which became the Osceola?

A. So I understand; yes, sir.

Q. Do you know what the purchasers of the Ossipee land paid for it to the Ossipee Company, after the sale made by you to Clarke?

A. No; I do not.

Q. In your settlement with Stanton, as a part consideration, you turned over to him all of the South Pewabic stock you had in your hands, did you not?

A. Yes, sir—I say, yes, sir—I presume I did. I was glad to get rid of it.

Q. You introduced yesterday a draft drawn by Mr. Palmer on you in favor of Mandlebaum—Exhibit 101?

413 A. I think it was.

Q. That item was omitted from your account; it is a four months' draft. Did you receive at that time a letter from Mr. Palmer advising you that he had drawn such a draft?

A. If you can give me the date of the letter, I perhaps can find it.

Q. We will pass that for a moment. Do you know what that draft was drawn for?

A. It was drawn for lands which Mr. Palmer purchased in Detroit; drawn on account of lands which Mr. Palmer bought in Detroit.

Q. Where did those lands ultimately go to?

A. Went into the Kearsarge Co.

Q. Will you see if you find the letter inclosing draft?

A. I cannot give you the date of the letter. Mr. Burr has looked all through my letters for it, and don't find any letter of advice.

At this juncture a discussion took place as to whose handwriting the various notes put in evidence was, and counsel for defendant made the following statement:

Mr. WALKER. All the $5,000 notes, with the exception of the Bird note of the 22, are in the handwriting of Mr. Loring, and the other three are in the handwriting of Mr. Burr.

Mr. SEAGER. I hand you the notes that you may examine them.

A. I have examined them.

Q. Twenty-two of those notes are in your handwriting, are they not?

A. Yes, sir.

Q. Three of them are in the handwriting of Mr. Burr?

A. Yes, sir; I should think they were.

Q. The notes referred to are the notes that have already been offered in evidence. Is there, on any of those notes, any of Mr. Palmer's handwriting, either figures, amount, or any other thing, except the signature?

A. Not on the face of them; I don't think there is.

Q. Is there on the back of them, if you wish to make a distinction (handing the notes to the witness)?

414 A. I don't see that there is any on the face of them.

Q. On the back of them?

A. No, sir; except the signature.

Q. You see nothing on any of these notes in Mr. Palmer's handwriting except the signatures?

A. No, sir.

Q. I will ask you a few questions in relation to the Weed File stock, which is the only remaining matter I think of; were you interested in that corporation personally?

A. I took the same amount Mr. Palmer did?

Q. When did you take your stock?

A. I think about the same time.

Q. You have stated that Mr. Palmer went with you to examine the machinery here, was that before or after the purchase of the stock?

A. I cannot say, but my impression would be that he examined the machinery and took the stock.

Q. You don't remember whether it was before or after the purchase?

A. No.

Q. Do you remember who was there when you went to examine the machinery?

A. I saw the proprietor, Mr. Bird.

Q. How proprietor, if it was a company?

A. He bought the patent.

Q. You think it was before the company was organized you went with Mr. Palmer?

A. I can't say.

Q. But when you did go you saw Mr. Bird with Mr. Palmer?
A. Yes, sir.
Q. Of whom did you buy your stock?
A. Of the same parties.
Q. Previous to the time that Mr. Palmer's stock was purchased or subsequently to it?
A. I think it was about one and the same time; that is my recollection of it.
415 Q. Did you ever have more than $5,000 of stock?
A. No, sir; not in the stock.
Q. Why do you qualify your answer?
A. There were bonds subsequently issued which I took, and lost all.
Q. Bonds of the Weed File Co.?
A. Yes, sir; either Weed File Co., or the Merrill Barrel Co., which succeeded them.
Q. On the account filed with the Master, your number 68 and 70 on the debtor side are for assessments paid the Weed File Co.?
A. Yes, sir.
Q. When did you pay those assessments?
A. At the time they were charged.
Q. And how could the stock be assessed when it was paid for in full?
A. Well, when I spoke of that I think Mr. Palmer took an interest in the Barrel Company that succeeded it, that is the best of my recollection.
Q. You have charged it here as assessments paid the Weed File Co., was the Weed File Co. ever assessed?
A. I can't say, but to the best of my recollection when the Barrel Co. succeeded them they called for funds.
Q. Your recollection is that it was not the Weed File Company, but on the Barrel Company, that the assessments were levied?
A. That is my impression.
Q. How many shares did Mr. Palmer have in the Barrel Company?
A. I can't say.
Q. Do you know how many you had yourself?
A. I do not.
Q. But these charges are for assessments paid on one of these companies?
A. Yes, sir.
Q. Paid out as assessments?
A. I don't know as to that. There was certainly that contribution made.
416 Q. State, as nearly as you can, what the change was by which the Weed File Co. became the Barrel Co.
A. I could not tell you.
Q. You don't recollect?
A. I don't recollect.

Q. Did you take, in going into the Barrel Co., any additional stock, except what was assigned to you on account of the Weed File Co.?

A. I can't recollect that I did, any further than some amount of bonds.

Q. Some of the bonds of the new company, you think?

A. Yes, sir; that is my impression.

Q. Were those taken on Mr. Palmer's account and your own?

A. I think they were; yes, sir; that is, to the best of my recollection.

Q. What did you receive the bonds for—pay cash for them?

A. Yes, sir; as contributions made to the company.

Q. How do you mean—contributions, assessments, or gratuity?

A. I cannot recollect exactly in what form it appeared.

Q. You have no receipts for any assessments for these items?

A. Nothing more than what I exhibit here.

Q. But what you exhibit here is only some stock certificates in the Barrel Co.

A. That is all I have, except Mr. Palmer's letter that he was anxious to keep his interest.

Q. But that is all you have—these stock certificates you filed as Exhibit 2?

A. And the note.

Q. I am not speaking of the note; I am speaking of the items. You don't know whether it was an assessment or not?

A. No sir; it has gone from me.

Q. Did you have any authority from Mr. Palmer to make any advances beyond such as were in the shape of legal liability on account of stock?

417 A. Nothing more than what his letters convey.

Q. Those are the letters in regard to the original purchase?

A. I have no other authority than from Mr. Palmer.

*Re-direct Examination.*

Mr. WALKER. I first call your attention to Nos. 68 and 70, upon the account filed with the Master for assessments paid the File Company. State whether an account, with these items charged in it, was furnished to Mr. Palmer?

A. It was.

Q. And whether those entries are contained in Exhibit 99?

A. They are.

Q. Did Mr. Palmer ever make any objection to those charges?

A. None whatever that I have any record of.

Q. Upon your account on file with the Master, debtor side, No. 12, state whether that charge for paying the Bird note was contained in the accounts sent to Mr. Palmer?

A. It was.

Q. And was it the same entry as is found in Exhibit No. 6?

A. Yes, sir.

Q. Did Mr. Palmer make any objection to that?

A. None whatever.

Q. State whether the charges contained in Exhibit No. 6, of assessments upon Adams stock—whether a copy of that account was furnished Mr. Palmer.

A. It was.

Q. And did he make any objection to the charge against him for payment of assessments on 1,420 shares?

A. None whatever.

Q. In Exhibit No. 90, being a copy from your book account with Mr. Palmer, there are three credits to him, growing out of Torch Lake stock; one for the stock of Bigelow, $643.17; one for two thousand shares, $3,000 with interest, and one for one thousand shares to Cotton, $1,500 and interest. State whether those
418 items are properly credits to Mr. Palmer.

A. No, sir.

Q. And why not?

A. For the reason that no stock of those companies was charged to Mr. Palmer in the filed account, except that allotted to him.

Q. You also have in the same account, a credit for 509 shares of Ossipee fully paid; state whether that belongs to his private account?

A. No, sir.

Q. In No. 91, the new land account, there is a charge to Mr. Palmer, of an assessment on South Pewabic, 250 shares, $1311.16. State whether that properly belongs to the land account or private account?

A. Belongs to the private account.

Q. These accounts have been termed land accounts and private accounts. Is there any clear distinction between the private and the land accounts, that you can draw?

A. No, sir; none that I can draw, that is, in the form they are at present.

Q. Your attention has been called to the fact, that in Exhibit 48, assessments are charged only upon a part of the stock. Can you make any explanation of that fact?

A. I can't—stock in what companies?

Q. In both the Ossipee and Kearsarge.

A. I cannot.

Q. Why are the assessments upon a portion of the stock charged at one rate, and of the other at another?

A. I cannot give any correct answer, any satisfactory answer.

Q. You have stated that Mr. Frue remitted through Mr. Palmer, about $114,000?

A. Yes, sir.

Q. State whether Mr. Palmer is entitled to any credit for any portion of that sum?

A. I should say to the extent of the cost of Mr. Frue's stocks in the different accounts.

419 Q. Mr. Palmer is entitled to no credit. You don't under-

stand the question. Is Mr. Palmer entitled to any credit in your account with him, to any portion of that $114,000?

A. No, sir; he is not. Well, that is a hard matter to explain—I understand it. He is not. It is a mere matter of form. I don't want to say he is not entitled to any credit——

Q. How is he entitled to anything; he don't claim anything?

A. Don't claim anything. Disconnected with the land account.

Q. What should the land account properly represent?

A. The interest of the various parties, in the various companies.

Q. What companies?

A. The Ossipee, Kearsage, and Iroquois.

Q. State whether you held any stock for Mr. Palmer in South Pewabic, as trustee for him?

A. I did.

Q. Did you hold any for any other persons at the same time?

A. Yes, sir.

Q. Did you pay assessments upon that stock while thus held by you as trustee?

A. Yes, sir, in conformity with these receipts. (Producing a paper.)

The receipts are offered in evidence and marked Exhibits 104, 105, 106, 107, 108.

Exhibit 104 acknowledges the receipt from C. H. Palmer, by E. T. Loring, of $750, for the second assessment of three dollars on 250 shares of stock in South Pewabic Copper Co. in the name of E. T. Loring, trustee. Dated Boston, Nov. 1st, 1866, and signed Lafayette Burr, treasurer.

Exhibit 105 is a receipt from E. T. Loring, trustee, of $1,259.79, in full of third assessment of five dollars a share, upon 250 shares of South Pewabic stock, standing in his name, with $9.79 interest. There is a memorandum on the face as follows: "Account C. H. Palmer." Dated Boston, Aug. 6th, 1867, signed Lafayette Burr, treasurer.

Exhibit 106 acknowledges the receipt from E. T. Loring,
420 trustee, of $757.88 for fourth assessment of three dollars a share on 250 shares of stock in South Pewabic, standing in Loring's name. Dated Boston, Nov. 8th, 1869, signed Lafayette Burr, treasurer.

Exhibit 107 acknowledges the receipt from Elisha T. Loring, trustee, of $1,000 for fifth assessment of four dollars per share upon 250 shares of stock in South Pewabic, standing in his name. The following mem. in pencil on face: "Account C. H. Palmer." Dated Boston, Nov. 18th, 1867, signed Lafayette Burr, treasurer.

Except 108 acknowledges the receipt from E. T. Loring, trustee, of $756.28, in full of sixth assessment of three dollars per share, on 250 shares of stock in South Pewabic stock standing in his name, dated Boston, Sept. 30th, 1868, signed Lafayette Burr, treasurer.

Q. Please look at Exhibit 104, and see whether you paid the as-

sessments upon the South Pewabic stock as therein mentioned, and at the time mentioned?

A. Yes, sir, I did.

Q. Do you know upon whose stock that assessment was paid?

A. Account of Charles H. Palmer.

Q. Please look at Exhibit 105, and say say whether the same thing is true of that?

A. It is.

Q. Look at Exhibit 106, and say whether the same thing is true of that?

A. It is.

Q. Look at Exhibit 107, and say whether the same thing is true of that?

A. It is.

Q. Look at Exhibit 108, and say whether the same thing is true of that?

A. Yes, sir.

Q. One single word that I wish to call out in relation to Franklin; what do you know about the records of the Franklin Company?

421 A. When I received a copy of Mr. Palmer's account, similar to the one filed with the Master, I called at the office of the Franklin Company, and was informed by the treasurer that all of the records of the company prior to 1868 were burned up in the great fire.

Q. You have admitted that there was $2,000 received from the Lake, November 8th, 1866, that was not credited upon Exhibit 48, received from Mr. Noble?

A. True, it was not credited in the land account, Exhibit 48.

Q. And state where that credit belongs; to the land account or to the credit of Mr. Palmer?

A. To the land account; it is embraced in the $114,000.

Q. I call your attention to the conditions of Mr. Palmer and yourself, so far as relates to the Ossipee; what was the original cost of the land?

A. The original cost of the land of the Ossipee was $40,000.

Q. What were the assessments, including the Douglass purchase subsequently made?

A. Three dollars and fifty cents—$70,000.

Q. Making a total cost of $110,000?

A. Yes, sir.

Q. How much were the first stockholders entitled to for stock sold?

A. You are speaking of the Ossipee?

A. Yes, sir.

A. $23,000?

Q. Leaving the total cost to the original stockholders of $87,000?

A. Yes, sir.

Q. Or $4.83⅓ per share?

A. Yes, sir.

Q. How many shares were allotted to Mr. Palmer?

A. I think, to the best of my recollection, 2,200; 375 to his son, if I recollect.

Q. In your account do you charge the whole of it to Mr. Palmer?

A. I do.

422 Q. Making, at $4.83\frac{1}{3}$, $12,542.50?

A. Yes, sir.

Q. What further stock did you charge to Mr. Palmer; I refer now to the 200 shares?

A. 200 shares of Donated Stock, amounting to $966.67, making the total charge $13,509.17; I find by a voucher shown me, that October 15th, 1868, I received from C. H. Palmer, Jr., at Lake Superior, $620.56, being in full for his assessment of $1.50 per share upon 375 shares and interest therein; I further credited to Mr. Palmer the sale of March 15th, 1872, this whole 2,595 shares at five dollars per share, $12.965; I further claim in relation to this interest, upon the advances made, from the time they were made until the payments and sale.

The above statement as to the Ossipee is made by Mr. Walker without objection by the witness and is assented to as true by him.

Q. You have still got 500 shares of Kearsarge according to this new statement?

A. I can't admit the fact as to it.

Q. I understand you to assent here to these amendments as we make them?

A. Yes, sir.

Mr. WALKER: In relation to the Kearsarge Company my claim is as follows: That the original cost of the Kearsage Company's land was $50,000, the assessments $40,000, total cost $90,000; $5,000 shares were sold for benefit of the original stockholders at $50,000, leaving the net cost of the balance, 15,000 shares, $40,000, or two dollars, sixty-six and two-thirds per share; Mr. Palmer and his son were allotted 1,875 shares, amounting to $5,000, being 1,800 to Mr. Palmer and 75 to his son; I credit him with 500 shares sold to Hall and others at $2.66 2-3, making $1,333.33; 500 shares sold to J. H. Cotton at three dollars, making $1,500; 375 shares sold S. Mandlebaum at $2.66 2-3, $1,000, making in all $3,833.33, thus leaving, according to this calculation, 500 shares still in defendant's hands to be accounted for upon settlement.

423 The WITNESS: I assent to that, subject to precise revision; I give him credit for that amount; it is subject to revision of prices if error be found.

Mr. SEAGER: That statement you have made in conformity with the suggestions made this morning; so far as relates to the Kearsarge, in conformity with our statement?

Mr. WALKER: Certainly; exactly that. I make the following

claim in relation to the Iroquois: The original cost was $10,000, or fifty cents a share, assuming 20,000 as the number of shares.

Mr. LORING: Yes, sir.

Mr. WALKER: Of this there was allotted to Mr. Palmer 2,500 shares, amounting to $1,250; we have credited him with 500 shares sold Hall and associates, 500 shares sold Cotton; but I am not able to state what amount has been received by us for these particular shares; 500 shares were sold to Douglass, for which we have received $2.50 a share, being $1,250; I suppose there is no escaping the facts.

The WITNESS: There is no escaping the facts; I don't want to do that.

Mr. WALKER: Whether the other 1,000 shares allotted to Mr. Palmer have been sold, or whether we have received the proceeds, we are not clear and leave it for proof.

The WITNESS: That is all right.

Q. I now call your attention to Torch Lake; who made the negotiations for the property known as Torch Lake and Penn?

A. Mr. Palmer.

Q. Where were they conducted?

A. In New York.

Q. You have already stated that when Mr. Palmer showed you the letter of Dec. 31st, or informed you of that letter, he showed you but a part of it, an extract from it?

A. Yes, sir.

Q. When did you first know or learn that Frue had directed the purchase of this upon his own account?

424 A. Upon the receipt of that letter in my office December 31st—was it? I can't recollect. He did write a lettter to that effect that he wanted to purchase it on his own account.

Q. But you can't recollect the date?

A. No, sir.

Q. When Mr. Palmer left the extract of the letter on December, 31, and the drafts contained therein, or a portion of them, with you, did you have any conversation with him about the purchase of that property?

A. I recollect Mr. Palmer was very anxious to make the purchase and went to New York for that purpose, and before he completed the purchase he returned to Boston; I protested against making any further purchases of that interest, and the reply was, "I am buying on Captain Frue's orders." I should say further, that these drafts were not set apart to meet the payment of those purchases exclusively, but put into my general financial account with Palmer; I protested against the purchase both by telegraph and letter.

Objected to as incompetent.

Q. Have you copies of those letter.

A. I have not; but I have admissions from Mr. Palmer as appears from the letters already put in evidence.

Q. Have you copies of your own letters?

A. No, sir.

Q. Why not?

A. They were burned in the fire.

Q. What do you know of the plan at that time of consolidating these two purchases, the Penn and Torch Lake?

A. It was discussed at my office verbally, and subsequently Mr. Palmer wrote me a letter to that effect, which is in evidence and referred to.

Q. You have already stated that at the time you supposed that Frue had authorized this purchase as the others had been made; at least was that your idea about that?

A. Frue and Palmer both urged this purchase.

Q. No, I am not asking that. Please answer my question. I am not asking about any interviews at all; you have already stated that between you and Palmer some shares were allotted Frue?

425 Yes, sir.

Q. Had you intercourse with Captain Frue upon that subject at that time?

A. Not with Frue in person.

Q. Had you any correspondence with him?

A. None whatever.

Q. Upon what statement, and at whose request, were those shares allotted to Frue?

A. At Mr. Palmer's.

Q. Have you ever had any direct communication with Captain Frue in relation to this Torch Lake purchase and property?

A. I can't recollect that I have.

Q. Did he ever make any demand upon you for any of the shares belonging to him in the Torch Lake?

A. None whatever.

Q. To whom was the stock and property purchased by Mr. Palmer in connection with the Torch Lake and Penn, transferred—in the first instance I mean?

A. To myself.

It is hereby agreed between the parties that either party may read from Frue's or Palmer's testimony, as taken on either of the former trials of the case of Frue *vs.* Loring, upon the trial of this cause, in the same manner and with like effect as though the entire testimony had been taken in this cause.

Q. It already appears that the property known as Penn was consolidated in 1872 with the Torch Lake; state whether from the time of the purchase of this property there had been any change in its apparent value?

A. Nothing more than depreciation.

Q. How about that depeciation?

A. There was a depreciation in all copper lands.

Q. How was it about the shares in these two interests being owned pretty much by the same parties?

A. Nearly so.

Q. And in 1872 was the real estate that was put in at $10,000 worth in the market any more than that?

426 A. No, sir; I don't think it was.

Q. How many acres were there?

A. 1,280 in all.

Q. State whether in this negotiation carried on in New York for the purchase of Penn, you had any correspondence whatever with Sibley upon the subject?

A. I had no correspondence with him, either in relation to Torch Lake or Penn.

The following is the statement of Mr. Walker, assented to by the witness:

My claim in relation to Torch Lake is as follows: The original cost of the 20,000 shares at $1.50 was $30.000; the original cost of 35 and 36 at $1.25, was $25,000; assessment of April 20th, 1872, of 75 cents per share, is $15,000; the assessment of April, 1879, at twenty cents per share, is $4,000, making the total cost of the 20,000 shares of the consolidated company $74,000. I claim under the facts in the case that Mr. Palmer is responsible to me for the shares allotted to Captain Frue, as well as for the shares allotted to himself, under my testimony in chief, and I therefore charge him with 3,600 shares of Torch Lake at $1.50 per share, being $5,400; 6,500 shares of sections 35 and 36 at $1.25, making $8,125; the total cost of the interest originally allotted to Frue and Palmer, $13,525; the assessment upon 3,600 shares at 75 cents is $2,700; the assessment upon the same number at twenty cents a share is $720, making my total claim against Palmer in Torch Lake and Penn $16,945, and accruing interest.

The WITNESS. I assent to that as a statement of my claim.

Mr. WALKER. It is admitted that the $10,000 note, which appears by the testimony to have been given by the Torch Lake Company for the interests in 35 and 36, known as the Penn, was actually paid by assessments paid into the treasury from time to time, and taken up.

Mr. LORING. I want it taken down that Mr. Burr, the treasurer of the company, assents to it.

Mr. BURR. I assent to it.

Q. It has already been shown by your books that at the
427 time of the auction sale in 1870, you balanced Mr. Palmer's account, and that subsequently, upon ascertaining that that sale was invalid, you so treated it and sold the stock.

A. Sold the Ossipee stock.

Q. Why was not the accout re-opened and a statement made?

A. For the reason that I treated it as a matter that was closed in

point of fact, being sold to the best advantage, and not to be re-opened, nor was Mr. Palmer notified in reality.

Q. Did you know at that time or have any information as to Mr. Palmer's pecuniary position?

A. Why, nothing more than is generally known in Detroit.

Q. What is it?

A. That he was insolvent; could not pay anything; commenced my suit against him in 1872; was discontinued.

The examination was here adjourned until 1 p. m. to-morrow.

THURSDAY, *July 31st*, 1879, 1 *o'clock p. m.*

*Re-Examination of the Witness Loring continued.*

Mr. WALKER:

Q. Please look at the Exhibit now shown you, purporting to be the copy of a letter written by yourself to Mr. Palmer Nov. 11th, 1870, and state whether that is a copy of the letter from your letter book?

A. I have no doubt of it.

Letter marked Exhibit 109 and offered in evidence, the following being a copy:

Nov. 11, 1870.

C. H. PALMER, ESQ., *Pontiac.*

DEAR SIR: I have your favor of the 7th. In reply, would remark that you have quite forgotten the conditions of the organiza- of the O. and K. Company. This bill was made out precisely as *all* bills were against those to whom you allotted the stock, you having assumed the payment of the land and collected from each the amount for cost of stock which each received. The company *never had any* stock, therefore none to bequeath Frue's friends,
428 hence the bequest requires the sanction of the directors, and then the cost of this 200 shares as per bill, becomes a legitimate charge against the company and the amount so charged goes to your credit and is *altogether* for your benefit, hence I am somewhat surprised you should hesitate about approving this.

The letter remailed at Houghton, on which you allude, I understood was not received at the time of our interview at Detroit. However it is, as you remarked, of no consequence. My allusion to it was merely to state that the purchasers cared nothing about the stock if you were desirous to or had the means to redeem it, which I should have been very glad for you to have done.

Yours truly, E. T. LORING.

Q. You yesterday made some statements of your claim growing out of the transactions relating to the several mining companies; I want to call out the fact whether those statements are correct, according to your belief?

A. I am of the opinion that they are correct in the main. The discovery that I have made this morning has developed some trans-

actions that I was not aware of, and of course a long time transpiring they are subject to corrections.

Q. But you believe those statements are substantially correct?

A. Yes, sir.

Q. You were inquired of yesterday whether the notes, or the most of them, signed by Palmer, were not written by you, and a small portion of them by Mr. Burr?

A. Yes, sir; there are twenty-two in my handwriting.

Q, The point is this: Whether the body of those notes was written before the signature was signed to it or after?

A. In every instance before the signature.

Q. How many notes were ever given at one time?

A. Two only. I don't know whether this is evidence. I always found Mr. Palmer very remiss about sitting down and writing about any business matters at all.

429 Q. You were shown yesterday a paper in the handwriting of Atwood, indicating that Frue was the owner of 420 shares of Adams. State whether, at the date of that entry, October, 1868, you had any open account with Frue, except the land account, in relation to these three companies?

A. None whatever. My land account had to be closed previous to that time.

*Re-cross Examination.*

Mr. SAEGER. You stated that you had never made any charges upon your books in relation to the stock sold at the auction sale of 1870, in either Palmer's account or the land account?

A. You misunderstood me. I entered the sales in the land account.

Q. I will put the question in another form. You have filed here Exhibits 90 and 91—

Mr. WALKER. No, we have not filed them.

Q. There are filed here Exhibits 90 and 91, being transcripts of all the charges upon your books of account against Chas. H. Palmer, or upon the land account. There are no entries upon either of these accounts that have been made since the auction sale of 1870, except where you charge on the land account the balance to capital stock, which you say was equivalent to charging it to profit and loss. Do these exhibits show all the entries you have in your books in relation to the land account or in relation to Chas. H. Palmer's account.

A. I can't say; it is the same as the book; I can't say what the books say one way or the other. If Mr. Burr has furnished you a correct copy of my books, he has furnished you a more correct statement than I could give you in my answer.

Q. There are no entries since that sale, except the one charging off to profit and loss I have spoken of. You stated yesterday, as the reason why no entry was made of the subsequent transactions in

relation to these stocks, that you were advised that Mr. Palmer was insolvent.

430 A. Yes, sir; that in substance; that was the reason why I withdrew the suit against him; took no further action.

Q. When did you withdraw that suit?

A. It was commenced in 1872; withdrawn in 1874.

Q. At the time you commenced the suit you supposed him to be solvent?

A. Supposed he had some means to pay his obligations; yes, sir.

Q. You supposed Capt. Frue was solvent, didn't you?

A. Yes, sir.

Q. What was that suit brought for?

A. For a balance I considered due me in that account.

Q. What was the amount of the balance?

A. I can't say; it has gone from me.

Q. Do you know whether it is the balance shown in this account?

A. I suppose it is; I presume it was; I can't recollect; I find in one thing I am mistaken, that Frue's account was closed with me in July, 1867.

Q. That is immaterial; Frue's account is not brought in here at all.

A. I find there is a subsequent account opened in my books with Frue after that time.

TUESDAY, *July 22d*, 1879, 10 o'clock a. m.

*Charles H. Hadley, sworn for defendant.*

Examined by Mr. WALKER:

Question. Where do you reside?

A. In Boston.

Q. What is your age?

A. Twenty-eight.

Q. Were you at any time in the employ of the defendant Loring, and if so when and in what capacity?

A. Three years previous to 1869, from '67; three years previous to 1867; I can't remember exactly how long—three or four years. I left there two or three days previous to November 12th, 1867.

431 Q. What was your business when in his employ?

A. Clerk.

Q. Look at the paper I now show you, being Exhibit 14, and state in whose handwriting that is?

A. It is my own handwriting.

Q. Where was that prepared?

A. At the office of Mr. Loring, 13½ Exchange avenue.

Q. Did you know Mr. Charles H. Palmer, of Michigan?

A. I was acquainted with him by seeing him there at the office; not personally.

Q. Will you state whether he was present at the office at the time these papers were made out?

A. He was present, in and out, at the time these papers were made out.

Mr. POST. You confine it to this paper now?

Mr. WALKER. Yes, sir. What do you know about this paper being subjected to his examination?

A. In what respect?

Q. Whether he saw them after they were made out?

A. They were passed to Mr. Loring and by him submitted to Mr. Palmer.

Q. Look at Exhibit 19. In whose handwriting is that?

A. Mine.

Q. Was that made at the same place?

A. Yes, sir.

Q. Do you remember whether it was made at the same time?

A. I do not.

Q. What do you know about Mr. Palmer's being present when that was prepared?

A. He was present, the same as the other paper.

Q. Present in the same way as with the other paper?

A. Yes, sir; whether he was in that particular day or not I can't state.

Q. Do you remember whether it was made at about the same time, or don't you remember?

A. I don't remember; no, sir.

Q. Do you know anything about this paper being exhib-
432 ited to Mr. Palmer—being presented to him in any way? What is your recollection about that?

A. I think Mr. Palmer saw that as well as the other paper.

Q. Look at the Exhibit I now show you, being No. 48, and say in whose handwriting for the most part it is?

A. Mine.

Mr. WALKER. The account shown to the witness is what is known as the omnibus account.

Q. Is any other portion of it in any other person's handwriting?

A. One item.

Q. Under what date?

A. January 9th, 1867.

Q. What is the item?

A. "Cash received from H. Bigelow, $8,000."

Q. In whose handwriting is that?

A. Mr. Loring's.

Q. You say you left, about November, 1867, Mr. Loring's employ?

A. Yes, sir,

Q. State whether that was made out previous to Nov., 1867?

A. It was.

Q. Have you any knowledge of whether Mr. Palmer was in the office about the time it was being made up?

A. I have not.
Q. Do you know from what it was made up?
A. No, sir, not now; I don't remember.
Q. You don't know whether it was copied from the book or another paper?
A. No, sir.

Cross-examined by Mr. POST:

Q. You don't know whether Mr. Palmer ever saw either of these papers, do you, of your own knowledge?
A. No, sir, I do not.
Q. Do you know that he was in the office on the day that either of them were prepared?
433 A. It is gone beyond my recollection.
Q. All you can say about it is that you saw Mr. Palmer in and out of the office frequedtly, at different times?
A. Yes, sir.
Q. And you don't know of your own knowledge whether Mr. Loring submitted those papers to Mr. Palmer?
A. No, sir.
Q. Take Exhibit 14 for instance: is that in your handwriting?
A. That is mine; the memorandum at the lower left hand corner, that signature at the right, at the foot, is not mine: the memorandum "see account," is not mine.
Q. Is this memorandum at the upper left hand corner yours—the figures?
A. No, sir.
Q. Whether the memorandum at the end of the column "paid in full, paid in part," is in your handwriting?
A. No, sir.
Q. Take Exhibit 19.
A. The memorandum at the top. on the left hand column "sold 100," is not mine; and the memorandum at the right, "paid in part, paid in full," is not mine; the memorandum at the foot, "C. H. Palmer," is not mine.
Q. Whose is that?
A. Mr. Loring's
Q. Then the rest of it is yours?
A. Yes, sir.
Q. Do you know what was done with these papers after they were finished—where they were left?
A. Undoubtedly with Mr. Loring.
Q. You don't know where he kept them afterwards?
A. In the safe.
Q. You saw them?
A. Not those personal papers; I saw papers there made up in a bundle.
Q. From what were these two Exhibits 14 and 19 made out?
A. From papers handed to me by Mr. Loring.

434 Q. You don't know what those papers were?
A. No, sir.
Q. They were not made from any book?
A. No, sir.
Q. Did you keep books for Mr. Loring?
A. No, sir.
Q. Who was his bookkeeper?
A. Mr. Burr.
Q. You did not keep the books at any time while you were there?
A. No, sir.
Q. Nor make any entries in them?
A. I made some entries in regard to some of his stockholding books, if I recollect right now, the company books; not in his personal affairs at all.
Q. What books do you refer to?
A. The books of the Kearsarge, South Pewabic, and Adams mining companies.
Q. I call your attention now to Exhibit 48. You said, I believe, that you did not remember from what that was made?
A. Yes, sir.
Q. Do you know whether this account was kept in any book?
A. No, sir.
Q. When was this item, which you say was in Mr. Loring's handwriting, entered upon this account, with reference to the time when the rest of it was prepared?
A. I should judge it was soon after.
Q. Was it before the footing?
A. No, sir.
Q. Do you know where that item came from; the item in Mr. Loring's handwriting?
A. It came from a previous; that is below that, it is scratched out. It is simply another date.
Q. The date where it was inserted before was in March?
A. Yes, sir.
Q. You judge it came from that, and was inserted in another place by Mr. Loring?
435 A. Yes, sir.
Q. Are the red ink entries in your handwriting?
A. No, sir.
Q. Is the continuation of the account over the leaf in your handwriting?
A. No, sir.
Q. In whose handwriting are the three items?
A. I should judge it was Mr. Burr's; I am not very familiar with his handwriting; I have not seen it in so long.
Q. Do you know what was done with this after it was made out?
A. It was handed to Mr. Loring.
Q. After that do you know where it was kept?
A. No, sir.

Q. Do you know whether that account was kept in any book of that form? (Showing book to witness.)

A. Not that I am aware of.

Q. What is your recollection as to whether you copied it from a book; do you think you did?

A. My recollection is, I did not copy it from a book.

Q. You did not have access to Mr. Loring's private books of accounts at all?

A. No, sir.

Q. Had nothing to do with them.

A. No, sir.

*Re-direct examination.*

Q Have you any recollection from what you did copy it; from another account or not?

A. My recollection is that I had other papers handed to me, and it was copied from them.

Q. Do you recollect what those papers were particularly?

A. No, sir.

Q. State whether the handwriting of Exhibit 14, in the margin, against the allotment of stock, is in your handwriting?

A. Yes, sir.

Mr. POST. You refer to that enclosed in the bracket?

Mr. WALKER. Yes, sir.

436 Q. And that was made at the time the other paper was made?

A. Yes, sir.

*Lafayette Burr, sworn on behalf of Defendant.*

Examined by Mr. WALKER:

Q. Look at Exhibits 14 and 19, purporting to be allotments of stock in the Ossipee and Kearsarge Mining Companies, and say in whose handwriting they are.

A. I think it is in the handwriting of Mr. Hadley. That is my recollection of his handwriting.

Q. State whether you were present when they were made.

A. Well, I think I was in the office; I can't tell exactly about when this was copied. I know I was in the office all the time I was there as a clerk.

Q. Do you know about the time when they were prepared?

A. I think so. I think it was in the winter of 1866–7. That is my impression—somewhere along there.

Q. Do you know anything about those allotments or papers coming under the supervision of Mr. Palmer?

A. I only know that Mr. Palmer and Mr. Loring were in conference about this allotment of stock, and that this paper was the result of their conference, so far as I knew anything about it at the time, given to me as the result of their deliberation in the matter.

Q. Do you know whether those allotments became the basis upon which the stock was distributed among the stockholders and settled upon?

A. I do. It was so in collecting the assessments; all based upon this allotment; never knew of any other.

Q. What were your relations to these companies at this time?

A. Treasurer of the Ossipee and Kearsarge.

Q. I now call your attention to the items 103, 104, and 105—what are your present relations to Mr. Loring?

A. Clerk.

437 Q. And bookkeeper?

A. Yes, sir.

Q. As such clerk and bookkeeper, have you had charge of keeping the account of the expenses connected with the items Nos. 103, 104, 105, 106, 107, 108, 109; whether you have kept the accounts relating to such expenses and charges as are there entered?

A. I have, with the exception of that charge of $20,000; that don't enter into my account at all; I have simply kept an account of the expenses connected with 23.

Q. Look at the paper I now show you, and see whether that is an account as you have kept it of the charges and expenditures connected with that matter?

A. It is.

Paper referred to is marked Exhibit 88, of which the following is a copy:

## EXHIBIT NO. 88.

THREE-FORTIES OF SEC. 23, T. 56 N., OF RANGE 33 W., IN ACC'T WITH E. T. LORING.

| | | | |
|---|---|---|---|
| 1869. | | | |
| June 12. | To cash paid D. H. Ball for stamp, etc. | ------ | $15 00 |
| Dec. 31. | interest on $15 to date at 7 per cent. | ------ | 58 |
| | | | 15 58 |
| 1870. | | | |
| July 1. | interest on $15.58, 6 mos. | ------ | 56 |
| | | | 16 14 |
| Dec. 31. | cash paid for tax titles | $84 69 | |
| 31. | interest on $16.14 6 mos. to date | 56 | 85 25 |
| | | | 101 39 |
| 1871. | | | |
| Feb. 28. | cash paid taxes for 1870 | 72 13 | |
| July 1. | interest on $72.13 to date | 1 72 | |
| 1. | interest on $101.39 6 mos. to date | 3 57 | 77 42 |
| | | | 178 81 |
| Dec. 31. | cash paid for taxes of 1871 | 66 15 | |
| 31. | interest on $178.81 6 mos. to date | 6 26 | 72 41 |
| | | | 251 22 |
| 1872. | | | |
| July 1. | interest on $251.22 6 mos. to date | ------ | 8 78 |
| | | | 260 00 |
| Dec. 31. | interest on $260 to date | ------ | 9 10 |
| | | | 269 10 |

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| | | | | |
|---|---|---|---|---|
| 1872. | | | | |
| Dec. 31, | To commission for services in payment of taxes, expenses 5 per cent. on $237.97 | | ------ | $11 90 |
| 1873. | | | | 281 00 |
| Jan. 9, | cash paid R. R. Goodell for services | | $46 66 | |
| 25, | cash paid taxes for 1872 | | 61 55 | |
| July 1, | interest on $108.21 to date | | 3 46 | |
| 1, | interest on $281.00 6 mos | | 9 83 | 121 50 |
| | | | | 402 50 |
| Dec. 31, | interest on $402.50 6 mos | | 14 10 | |
| 31, | com. at 5 per ct. on $402.50, 6 mos | | 5 40 | 19 50 |
| 1874. | | | | |
| Jan. 31, | cash to Goodell for services | | 50 00 | 422 00 |
| Feb. 19, | cash to taxes for 1870 | | 28 88 | |
| July 1, | cash to interest on $78.88 to date | | 2 21 | |
| 1, | cash to $422 6 mos | | 14 77 | 95 86 |
| | | | | 517 86 |
| Dec. 31, | cash to $517.86 5 mos. to date | | 18 13 | |
| 31, | commission at 5 per cent. $78.88 | | 3 95 | 22 08 |
| 1875. | | | | 539 94 |
| Jan. 2, | cash paid Goodell for services | | 50 00 | |
| 22, | cash paid taxes for 1874 | | 35 07 | |
| July 1, | interest on $85.07 to date | | 2 83 | |
| 1, | interest on $539.94 6 mos | | 18 90 | 106 80 |
| | | | | 646 74 |
| Dec. 31, | interest on $646.74 6 mos. to date | | 22 64 | |
| 31, | commission at 5 per cent. on $85.07 | | 4 25 | 26 89 |
| 1876. | balance as per acc't on file | | ------ | 673 63 |
| Jan. 4, | cash paid for taxes for 1875 | | 106 53 | |
| 11, | cash paid for Goodell's salary | | 50 00 | |
| July 1, | interest on $156.53 to date | | 5 35 | |
| 1, | interest on $673.63 to date | | 23 59 | 185 47 |
| | | | | 859 10 |
| Dec. 31, | interest on $829.10 6 mos. at 7 per ct | | 30 06 | |
| 31, | commission on $156.53 at 5 per cent. | | 7 83 | 37 89 |
| 1877. | | | | 869 99 |
| Jan. 6, | cash paid taxes 1876 | | 86 72 | |
| 11, | cash paid Goodell's salary | | 50 00 | |
| Feb. 6, | cash paid Chandler & Grant | | 21 00 | |
| July 1, | interest on $157.72 to date | | 5 20 | |
| 1, | interest on $896.99 to date 6 mos | | 31 40 | 194 32 |
| | | | | 1,091 31 |
| Oct. 9, | cash paid taxes and ¼ for 1870 | | 56 76 | |
| Dec. 31, | interest on $56.76 to date | | 90 | |

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| | | | | |
|---|---|---|---|---|
| Dec. 31, | to interest on $1,091.31 to date 6 mos | | 38 22 | |
| 31, | commission on $214.48 at 5 per cent. | | 10 73 | 106 61 |
| 1878. | | | | 1,197 92 |
| Jan. 4, | cash paid taxes of 1877, $75.01, salary of R. R. Goodell, etc., $55.86 | | 128 87 | |
| 21, | cash paid taxes of 1877 on und. ¼ | | 25 25 | |

| | | | | |
|---|---|---|---|---|
| 1878. | | | | |
| July | 1, | To interest on $1,197.92, 6 mos. to date, at 7 per cent. | $41 93 | |
| | 1, | interest on $154.12, 5 mos. 15 days | 4 83 | $200 98 |
| | | | | 1,389 90 |
| Dec. | 31, | interest on $1,398.90 6 mos. to date | 48 96 | |
| | 31, | commission on $154.12 at 5 per cent. | 7 70 | 56 66 |
| | | | | $1,455 56 |

CR.

| | | | | |
|---|---|---|---|---|
| Nov. | 7, | By cash undivided ½ redeemed | $57 76 | |
| | 7, | interest on $56.76 to Dec. 31 | 59 | 57 35 |
| | | | | 1,398 21 |
| 1879. | | | | |
| Jan. | 8, | To cash paid taxes, 1878 | 51 51 | |
| | 8, | cash paid R. R. Goodell | 50 00 | |
| | 20, | cash paid John McGinn | 25 00 | |
| July | 1, | interest on $1,398.21 6 mos. | 48 93 | |
| | 1, | interest on $126.51 | 4 28 | |
| | 1, | commission on $126.61 at 5 per cent. | 6 33 | 186 05 |
| | | | | 1,584 26 |
| 1868. | | | | |
| June | 18, | cash paid Thos. F. Mason for land | 20,000 00 | |
| 1879. | | | | |
| July | 1, | interest on $20,000 to date at 7 per cent. | 15,440 55 | 35,450 55 |
| | | | | $37,034 81 |

Q. When was this account made up?

A. It was made up from time to time from 1869, annually.

Q. When was this paper, Exhibit 88, drawn?

A. I can't tell you exactly when I commenced it. I have kept the account added each year.

Q. Have you kept it on that paper?

A. I have kept it since 1869 on that paper—transcript from my books.

Q. Is this paper a transcript of your books?

440 A. Of my books. I have simply kept that separate with the vouchers simply to have it with the papers. I have made up the interest, as you will see.

Q. Do your book entries correspond with the entries upon the papar?

A. Yes, sir.

Q. They were made simultaneously upon the book and the paper?

A. Yes, sir.

Q. Will you give the gross amount of the various classes of items that enter into that account?

A. The taxes amount to $750.25; stamps, $15; Goodell and others, $396.52; interest, $421.75; commissions, $58.09; sale, $57.35; which was the amount, I think, was put to the credit. I have forgotten it now. I think the taxes were paid, and then this amount was repaid.

Q. Your attention is called as to whether Exhibit 88, the account, was not all drawn off to 1877 at one time?

A. I can't say. It appears so. I can't say positively about that how that was.

Q. You have stated that they were made cotemporaneously with the entries in the book?

A. I did not mean to say that. I made up the account. I can't say exactly when I made it up from the books.

Q. The entries on the books were made when the moneys were paid?

A. Yes, sir; and this account was drawn off the books. The object of this was to show how the interest was calculated from time to time. The book entry—the general entry—would not show these particulars; simply shows the gross amount of interest charged semi-annually and the commissions charged at the end.

Q. The vouchers for taxes and actual expenses are enclosed in this envelope, are they not?

A. Yes, sir; and numbered, I think, to correspond with the number in red ink on the account.

Q. How long have you been in Mr. Loring's employ?

A. I took charge of his books Jan. 1st, 1868.

Q. Have you been in charge of them ever since?

441 A. Yes, sir.

Q. What has become of the original books of entry up to 1872?

A. They are in our possession.

Q. The books of entry, I mean.

A. From the first of January, 1868, up to 1872.

Q. Were not any of them destroyed by the fire?

A. Not from the first of January, 1868. I commenced to take charge of them at that date.

Q. What books were destroyed by the fire?

A. Those containing entries made previous to January 1st, 1868.

Q. And when and how were they destroyed?

A. They were in the office outside of the safe, as I understand it, and the building was blown up, burned, and the safe was left standing, and the books that we had that were saved were inside the safe.

Q. Look at Exhibit No. 48, and state whether you have seen it before?

A. I have a number of times.

Q. Was there a continuation of an account like that in the name of Mr. Palmer and covering various transactions, in the books after you took charge?

A. Yes, sir.

Q. And that account is still in existence?

A. Yes, sir.

Q. And where is the book from which this account, Exhibit 48, is drawn?

A. It is *non est.*

Q. What relation do you hold to the Torch Lake Company?

A. Secretary and treasurer.

Q. How long have you occupied that relation?

A. Since it was moved from New York, in 1871–72, I think. The office was moved about that time. The first meeting of the directors of Torch Lake in Boston at which I appear as secretary was "Boston, March 30th, 1872."

Q. Have you since that time kept an account between that company and Mr. Loring?

442 A. I have.

Q. Will you state whether the Exhibits now shown you present a true statement of those accounts from year to year?

A. I believe they do, commencing from August, 1872, closing April 1st, 1879.

Examination is here adjourned until 10 o'clock to-morrow.

*Cross-examination.*

Mr. SEAGER. How long have you been in the employ of Mr. Loring?

A. I don't remember exactly when I commenced taking charge of his books—O, yes, it was the first of Jan., 1868; I have been connected with him since 1856, more or less, but I think I went into his employ in January, 1868.

Q. What time in 1856?

A. I took charge of the South Pewabic and Adams in April or May, 1856.

Q. Have Mr. Loring and yourself, since 1856, occupied the same office?

A. Yes, sir; we have been together in the same offices.

Q. Didn't you from time to time, before taking the formal charge of Mr. Loring's books, make statements for him when requested to do so?

A. I presume so; I don't remember it particularly; I think likely I may have done so.

Q. If I remember right, some Exhibits prior to that time are in your handwriting?

A. Very likely; being connected with these companies I would be called on to write off statements.

Q. You were somewhat familiar with his books prior to taking charge of them?

A. No, sir; I knew nothing about any of his books prior to those I have opened.

Q. How did you make copies then?

A. The only copies I have made, I have made from sheets handed to me.

443 Q. I show you what purports to be a copy of Exhibit 48, with interest marked opposite each item of the account in red ink; will you please say whether those entries of interest are in your handwriting?

A. They appear to be; I would say they were, those figures.

Q. I produce now Exhibit 90, which you withdrew from the files for correction; what was the correction which you have made in the Exhibit?

A. Inserting "March 8th, Chas. H. Palmer to bills receivable, $5,103.33; March 12th, bills receivable $5,103.33" and correcting March 3d, the interest account, carrying it out in full instead of deducting $747.63.

Q. That was necessary by reason of the insertion of the other items you have spoken of?

A. Yes, sir? the credit item has also been changed, "April 30th, by sundries to balance the error, $10,254.29."

Q. Does that account as it now stands, being Exhibit 90, present a true transcript of Mr. Loring's books and of all the entries upon his books relating to Chas. H. Palmer?

A. I believe it to be so; yes, sir.

Q. When were the entries which you omitted from the account as first presented, and which you now testify you have inserted in the Exhibit made, put on Mr. Loring's books, at the time they bear date?

A. I cannot tell without referring to the blotter.

The witness here refers to the blotter.

A. Yes, sir.

Q. You have before you the day-book of Mr. Loring's?

A. Yes, sir; called the day-book or blotter.

Q. Will you please give in full, as appears from the day-book entry, the credit item on this account, under date of April 30th, 1869?

A. "Sundries debtor to C. H. Palmer; bills receivable; error in entry of March 8th, $10,266.66; interest account; error in March entry 8–12, $47.63.

Q. When was that entry you have just read made?

A. April 30th, 1869, here.

Q. And was the transcript to the ledger in the form you give it in this account?

444 A. Yes, sir.

Q. When was the entry on the ledger made?

A. Probably very soon after; I don't know; it is customary to make up my books every month.

Q. Before the account was balanced, was it not?

A. I presume it was made in April or early in May; it must have been in May, because I close up my books every month and draw off the balance.

Q. Why did you omit these entries on the account as first presented?

A. My idea was you simply wanted to show the account, and I thought as one was an error and the other a balance of the error, it was not necessary they should appear.

Q. Were you instructed to omit that?

A. No, sir; it was done of my own accord.

Q. Under date of March 31st, you have carried from this account to the land account $15,042.19. How was that amount arrived at?

A. I could not tell you, sir. I suppose, probably, it must have been made up, as the amount due or chargeable to the land account by Mr. Loring. And I was directed to pass that amount to his credit.

Q. Directed by whom?

A. By Mr. Loring. There is no entry of it here. I have simply the land account. "Land account C. H. P., debtor, to C. H. Palmer, balance on land account passed to the credit of C. H. P." This was $15,042.19.

Q. Under date of Aug. 31st, you have brought back from that land account $1,093.68?

A. Yes, sir; I have it, it is here.

Q. Is not that an arbitrary charge brought from the land account for the purpose of balancing the Palmer land account?

A. To reduce the land account. I suppose it was found afterwards that the amount chargeable to the land account was greater than was correct, and that this amount was charged to this account, reducing the amount of the account some $13,000.

445 Q. At that date, Aug. 31st, you brought from the land account, an amount exactly sufficient to balance Palmer's private account, didn't you?

A. It seems so here.

Question repeated to the witness.

A. It seems to be so here.

Q. Will you read the blotter entry?

A. "C. H. Palmer, debtor to land account, C. H. P., balance to his credit deducted from amount due to him on land account, $1,093.68."

Q. Exhibit 91 is headed, "Land Account," and then in parenthesis, "C. H. Palmer and Others." Is the entry on this Exhibit which is enclosed in parenthesis, found on Mr. Loring's book?

Q. I can't say positively, because I have not the ledger before me, but I find in all these rough entries that the initials "C. H. P.," appear in the account. It is possible it is so.

Q. You don't recollect then, whether this is a correct copy of that or not?

A. I could not, but it is my impression, it is.

Q. Will you please look at the ledger to see what it does say?

A. Yes, sir.

Q. You have stated that on what purports to be a copy of Exhibit 48, the interest entries are in your handwriting. Will you please state at what rate the interest is computed on each side?

A. Debit 6, and credit 7.

Q. Have you the voucher for the item I just called your attention to, the first item on Exhibit 88?

A. I have. "E. T. Loring, to Dan H. Ball, to stamp for Frue

deed, $5, to drawing contract, etc., and services in land matters with Frue $10—$15. Received payment, Dan. H. Ball."

*E. T. Loring Re-called for further Cross-Examination.*

Q. You have heard Mr. Burr's testimony in relation to
446 these items, and have seen the voucher which produced. I ask you whether the charge of $15 is not for the stamp on the deed executed by you to Frue, for a quarter of this land, and the charge of ten dollars is not for Ball's services in drawing the contract, which was made contemporaneously with the deed between you and Frue?

A. Yes, sir.

*Lafayette Burr recalled.*

Mr. WALKER. You have stated that these accounts represent all the accounts upon Mr. Loring's books, relating to Mr. Palmer—these accounts 90 and 91?

A. Yes, sir.

Q. Do you refer to the books of Mr. Loring's, previous to January, 1868?

A. No, sir; I know nothing about those books?

Mr. SEAGER. I did not suppose there would be any misunderstanding about that.

Mr. WALKER. You were asked whether you omitted upon Exhibit 90 certain charges and credits by instructions from any one, and you stated no; state whether I did not instruct you to make a full copy of the account?

Mr. SEAGER. You certainly did.

A. I don't remember particularly; I presume you did; I think very likely you may have done so, and yet not expecting you would want every thing, I left out the error and the credit of the error.

Q. I ask you as it appears that you were in the office of Mr. Loring, if you are not hard of hearing?

A. I am.

Q. So that a good deal passes that you do not hear when you are present?

A. Yes, sir.

Q. You have said that you did not know how the first entry upon the land account, No. 91, was obtained, but that you supposed from some instructions from Mr. Loring?

A. Yes, sir.

447 Q. Have you any recollection about any such instructions?

A. I have no recollection at all, sir, about it.

Q. You have been inquired of in relation to the land account, No. 91, and the account with Mr. Palmer No. 90, as to the $1,093.-68; state whether Mr. Loring gave any instructions in relation to that item?

A. I have no recollection, sir, about it.

It is agreed between the parties, that as Mr. Burr's attentien has been called to the heading upon Exhibit 91, he is to examine the book and make a statement as to what the correct heading is, and that his statement shall be considered as evidence upon that point.

Mr. Burr's statement, made under above stipulation, is that the heading of the Land Account as it appears on the ledger is "Land Account (C. H. P.,") and not "Land Account (C. H. Palmer and others") as it was written on Exhibit 91.

448, 449, 450, 451, 452 The Circuit Court of the United States for the Eastern District of Michigan. In Equity.

CHARLES H. PALMER, Complainant,
*vs.*
ELISHA T. LORING AND CHARLES A. WELCH, Defendants.

*Record on the Accounting—Vol. II.*

ASHLEY POND,
SCHUYLER F. SEAGER,
AND HOYT POST,
*Solr's for Compl't.*

CHARLES I. WALKER,
*Sol'r for Def'ts.*

453 In the Circuit Court of the United States for the Eastern District of Michigan. In Equity.

CHARLES H. PALMER, *Complainant*,
*vs.*
ELISHA T. LORING AND CHARLES A. WELCH, *Defendants.*

COMMONWEALTH OF MASSACHUSETTS, } *ss:*
*County of Suffolk.* }

Elisha T. Loring, being duly sworn, deposes and says that he is one of the defendants in the above entitled cause; that when his former account in this cause was made up, he believed it to be substantially correct. Deponent was not much acquainted with bookkeeping himself, and most of his books and papers relating to this account had been destroyed by fire, and he made up his former statement the best that he could from his recollection, and the imperfect material still in his possession. On his examination before the Master, his memory was refreshed by the papers shown to him, and he found that there were many errors in said statement of account.

He further says that the annexed account is made up with the aid furnished by this means, and this deponent verily believes it to be true.

(Signed) ELISHA T. LORING.

454 UNITED STATES OF AMERICA, *Massachusetts District.* } *ss:*

MAY 11th, A. D. 1880.

Then personally appeared the above-named Elisha T. Loring, and made oath that the foregoing affidavit by him subscribed is true.

Before me, William S. Dexter, commissioner of U. S. circuit court for said district.

## DEFENDANT LORING'S AMENDED ACCOUNT.

*Filed May 15th, 1880.*

CHARLES H. PALMER, IN ACCOUNT WITH ELISHA T. LORING.

| 1865. | | Dr. Interest Acc't, 7 Per Cent. | | |
|---|---|---|---|---|
| October | 3, | To am't remitted R. H. Rickard per order | $139 42 | $1,500 00 |
| | 24, | paid E. D. Brigham, S. W. stock | 215 02 | 2,420 00 |
| | 27, | draft, favor of G. H. Sanford | 176 55 | 2,000 00 |
| Nov'r | 14, | draft, W. B. Frue, favor of J. Senter | 38 23 | 450 00 |
| | 28, | draft, W. B. Frue, favor of J. Senter | 49 35 | 600 00 |
| 1866. | | | | |
| Jan'y | 12, | transfer to acc't of W. B. Frue | 186 88 | 2,535 75 |
| March | 9, | draft favor of J. N. & Co. $150, cash $100 | 15 66 | 250 00 |
| May | 18, | paid his note | 300 08 | 2,500 00 |
| | 18, | Tilton on his acc't | | 3,600 00 |
| Aug. | 13, | favor N. B. H. | 6 53 | 200 00 |
| Sept. | 1, | J. B. Ross | 4 38 | 150 00 |
| | 4, | note paid L. Bird | 142 92 | 5,000 00 |
| | 27, | cash | 2 41 | 100 00 |
| Nov. | 1, | ass't on 250 shares So. Pewabic Stock | 13 12 | 750 00 |
| | 1, | p'd 100 shares Hecla stock (cash Oct. 17) | 121 33 | 6,000 00 |
| | 3, | expenses to Pittsburg | 85 | 50 00 |
| | 17, | sundry telegrams | 36 25 | 26 97 |
| | 17, | paid his note at bank | | 2,500 00 |
| Dec. | 28, | expense collecting draft on Chicago | ------ | 3 03 |
| | 31, | sundry telegrams to date | 23 | 26 23 |
| | 31, | expenses, express, and copying deed | ------ | 6 65 |
| 1867. | | | | |
| Jan. | 12, | expenses, express on specimens | ------ | 4 25 |
| | 12, | telegraphing | 08 | 8 91 |
| | 25, | at sundry times | ------ | 16 08 |
| | | | $1,449 89 | |
| Feb. | 1, | balance interest to date | ------ | 21 86 |
| | | | | $30,719 28 |

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| 1865. | | Contra, Cr. Interest Acc't, 7 Per Cent. | | |
|---|---|---|---|---|
| Sept. | 12, | By am't received of J. H. Cotton, 500 shares Adams stock | $291 08 | $3,000 00 |
| Sept. | 20, | received of C. D. Head and T. H. Perkins, 200 shares Adams stock | 105 01 | 1,100 00 |
| October | 4, | received of A. A. Frazer, 500 shares of So. Pewabic stock | | 3,000 00 |
| October | 4, | rec'd of E. T. L. 11 shs. Pewabic stock | 284 36 | 66 00 |
| Nov. | 20, | his note discounted at bank | 200 13 | 2,387 50 |

| | | | | |
|---|---|---|---|---|
| 1866. | | | | |
| Jan'y | 12, | By am't received of C. D. Head and T. H. Perkins | $6 04 | $82 28 |
| Feb'y | 26, | received from land warrants | 14 98 | 230 00 |
| March | 30, | cash | 5 92 | 100 00 |
| May | 2, | rec'd for 250 shaes So. Pewabic stock | 92 00 | 1,758 75 |
| | 18, | his note discounted at bank | 118 46 | 2,407 50 |
| | 28, | rec'd of Wm. Cobb for 500 shares Adams stock | 137 88 | 2,917 80 |
| Sept. | 4, | received for 1,000 shares Adams stock | 171 50 | 6,000 00 |
| | 27, | rec'd half J. B. Ross' bill for extinguishing title | 72 | 30 00 |
| | | | $1,428 08 | |
| 1867. | | | | |
| Feb'y | 1, | By balance to his credit on land acc't in connection with Ossipee, Kearsarge and Iroquois Mining Cos., as per copy of acc't herewith | ------ | 566 67 |
| Feb'y | 1, | By balance carried forward | ------ | 7,073 38 |
| | | | | $30,719 23 |

| 1867. | | Dr. Int. Acc't. 8 Per Ct. | | |
|---|---|---|---|---|
| February | 1, | To balance bro't forward | $518 76 | $7,073 38 |
| | 19, | cash $225, 21st cash $100, 25th cash $700 | 71 06 | 1,025 00 |
| March | 4, | $200, $140 | 22 44 | 340 00 |
| | 7, | paid telegraphing | 51 | 8 04 |
| | 28, | paid H. Bigelow to balance account with C. H. P | 6 00 | 96 99 |
| April | 1, | ass't on 100 shares Hecla stock | 18 00 | 300 00 |
| | 3, | Smelting Works stock | 64 72 | 1,086 40 |
| | 22, | sundry telegrams | ------ | 16 10 |
| May | 7, | $50, 17th cash $22 | 4 57 | 72 00 |
| | 20, | | 7 66 | 150 00 |
| June | 25, | paid draft favor of J. Chassel $100, 29th, cash $100 | 8 26 | 200 00 |
| 456 | | | | |
| July | 15, | ass't 100 shares Hecla Stock | 18 44 | 500 00 |
| August | 6, | ass't 250 shares So. Pewabic stock and interest | 40 66 | 1,259 79 |
| | 9, | renewal notes at bank | 11 04 | 350 00 |
| | 27, | draft in his favor | 5 51 | 200 00 |
| Sept. | 19, | paid ass't on 1,420 shs. Adams stock | 66 01 | 2,912 90 |
| Nov'r | 8, | ass't on 250 shs. So. Pew. stock | 8 92 | 757 88 |
| | 18, | " " " " | 9 56 | 1,000 00 |
| | 20, | draft favor of Mrs. Palmer | 2 73 | 300 00 |
| | 21, | ass't on 100 shs. Hecla stock | 8 92 | 1,005 00 |
| | 27, | draft favor of Mrs Palmer | 76 | 100 00 |
| Dec. | 10, | " " | 1 40 | 300 00 |
| | 17, | ass't on $1,420 shs. Adams stock | 18 43 | 4,315 50 |
| | | | $909 36 | |
| Dec. | 31, | To balance interest acc't | ------ | 70 52 |
| | 30, | To balance to new acc't | ------ | 8,141 77 |
| | | | | $31,581 27 |

| 1867. | | Contra, Cr. Int. acc't 7 Per Ct. | | |
|---|---|---|---|---|
| Feb'y | 15, | By net am't his note discounted at bank | $295 42 | 4,807 50 |
| | 25, | " " " " " | 286 07 | 4,807 50 |
| May | 21, | " " received from Ossipee Mn'g Co., for services rendered | 106 95 | 2,500 00 |

| 1867. | | | | |
|---|---|---|---|---|
| Nov'r | 8, By net amount received from his note, discounted at bank, 4 months | $50 12 | $4,864 17 |
| Nov'r | 12, By net am't rec'd from his note discounted at bank, 4 months | 46 48 | 4,877 92 |
| Nov'r | 18, By net am't rec'd from his note discounted at bank, 4 months | 39 57 | 4,846 26 |
| Dec. | 16, By net am't rec'd from his note discounted at bank, 4 months | 14 23 | 4,877 92 |
| | | $838 84 | $81,581 27 |

| 1868. | | Dr. Int. Acc't 8 Per Ct. | | |
|---|---|---|---|---|
| January | 4, To cash paid for stamps | | | 2 50 |
| | 21, paid ass't on Hecla stock | 30 44 | | 400 00 |
| Feb'y | 11, renewing note at bank | 28 80 | | 405 00 |
| | 17, paid C. H. P | 9 77 | | 100 00 |
| | 26, paid draft favor A. H. Sibley | 16 95 | | 250 00 |
| | 29, renewal of note | | | 180 42 |
| | 29, S. & W. for legal services | 12 55 | | 6 00 |
| March | 7, renewal note and stamp | 13 45 | | 205 83 |
| | 19, paid his note | 313 33 | | 5,000 00 |
| 457 | | | | |
| April | 15, Stock D. & L. S. Copper Co | 166 40 | | 2,925 00 |
| | 18, draft favor of Revere House | | | 171 61 |
| | 18, paid his note | 290 77 | | 5,000 00 |
| | 25, " " | 273 33 | | 5,000 00 |
| May | 1, " " Weed File Co | 11 30 | | 211 47 |
| | 4, " " draft Revere House | 10 53 | | 200 00 |
| June | 13, " " Weed File Co | 9 32 | | 211 47 |
| August | 14, " " | | | 5,000 00 |
| | 14, " " | 304 44 | | 5,000 00 |
| | 22, " " | 143 33 | | 5,000 00 |
| | 27, " " | 137 77 | | 5,000 00 |
| | 31, " " | 133 33 | | 5,000 00 |
| Sept. | 1, " " | 133 33 | | 5,000 00 |
| | 12, " " | 121 11 | | 5,000 00 |
| | 28, ass't on 250 shs. So. Pewabic stock | 15 62 | | 756 28 |
| Nov'r | 20, draft favor of S. M | 10 93 | | 1,200 00 |
| Dec. | 16, his note | 16 67 | | 5,000 00 |
| | 19, " | 13 33 | | 5,000 00 |
| | | $2,216 80 | | |
| Dec. | 31, Balance to new acc't | ------ | | $14,123 47 |
| | | | | $81,349 05 |

| 1868. | | Contra Cr. Interest Acc't 7 Per Ct. | | |
|---|---|---|---|---|
| | Balance brought forward | | $569 94 | $8,141 77 |
| January | 4, By cash net am't of note | | 336 38 | 4,845 84 |
| April | 13, " " less stamps | | 243 11 | 4,846 26 |
| | 23, " " " | | 213 77 | 4,847 50 |
| | 28, " " " | | 228 87 | 4,843 75 |
| July | 1, div'd D. & L. S. C. Co., 1,125 shs | | 59 08 | 1,687 50 |
| August | 14, net am't of his note | | 129 97 | 4,877 92 |
| | 17, " " | | 126 65 | 4,860 83 |
| | 18, " " | | 123 98 | 4,794 17 |
| | 27, " " | | 115 58 | 7,794 17 |
| | 31, " " | | 111 88 | 4,795 28 |
| Sept. | 3, " " | | 111 64 | 4,860 83 |
| | 12, " " | | 88 00 | 4,843 75 |

| | | | | |
|---|---|---|---|---|
| 1868. | | | | |
| Nov'r | 7, | By cash from Kearsarge Co. for land | | $2,500 00 |
| | 7, | paid by Kearsarge Co. his services | $31 88 | 500 00 |
| Dec. | 21, | from F. J. Kingsbury, for D. & L. S. stock | 9 72 | 5,000 00 |
| Dec. | 28, | from F. J. Kingsbury, for D. &. L. S. stock | 5 83 | 10,000 00 |
| | | | $2,526 28 | |
| Dec. | 31, | By balance interest acc't | ------ | 309 48 |
| | | | | $81,349 05 |

458

| | | | | |
|---|---|---|---|---|
| 1869. | | Dr. Interest Acc't 8 Per Ct. | | |
| January | 6, | To cash p'd his note at bank | $394 44 | $5,000 00 |
| | 15, | " " | 384 44 | 5,000 00 |
| Feb'y | 17, | paid renewing his note | 13 96 | 200 00 |
| | 20, | " his note at bank | 345 56 | 5,000 00 |
| March | 3, | " " | 331 11 | 5,000 00 |
| | 20, | for sale of Hecla stock | 1 81 | 25 80 |
| | 31, | ass't on Adams st'k (cash Nov. 10, '68) | 130 05 | 1,424 14 |
| August | 18, | his note | 153 33 | 5,000 00 |
| | 28, | " | 136 67 | 5,000 00 |
| | | | $1,891 37 | |
| Dec. | 31, | balance int. acc't | ------ | 171 45 |
| | | | | $31,821 39 |

| | | | | |
|---|---|---|---|---|
| 1868. | | Contra, Cr. Interest Acc't 7 Per Ct. | | |
| Dec. | 31, | By balance forward | $988 68 | $14,123 47 |
| 1869. | | | | |
| Feb'y | 16, | cash rec'd from his note | 294 12 | 4,801 94 |
| March | 20, | " " sale of Hecla stock | 437 12 | 8,000 00 |
| | | | $1,719 92 | |
| Dec. | 31, | balance to new acc't | ------ | 4,895 98 |
| | | | | $31,821 39 |

| | | | | |
|---|---|---|---|---|
| 1869. | | Dr. Interest Acc't 7 Per Ct. | | |
| Dec. | 31, | To balance forward | $1,028 16 | $4,895 98 |
| 1872. | | | | |
| Dec. | 31, | balance int. acc't | ------ | 223 18 |
| | 31, | " carried forward | ------ | 10,222 51 |
| | | | | $15,341 67 |

| | | | | |
|---|---|---|---|---|
| 1872. | | Contra, Cr. | | |
| March | 15, | By cash rec'd from sale of Ossipee stock, 2,595 shares, at $5 | $719 03 | $12,975 00 |
| July | 16, | By cash rec'd from sale of Adams stock, 1,420 shares at $1$\frac{3}{4}$ | 75 95 | 2,366 67 |
| | | | $794 98 | $15,341 57 |

| | | | | |
|---|---|---|---|---|
| 1867. | | Dr. | | |
| Feb'y | 1, | To 3,600 shs. Torch Lake stock at $1 50 | | 5,400 00 |
| | 1, | 6,500 shs. sec 35 and 36 " 1 25 | | 8,125 00 |

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| | | | |
|---|---|---|---|
| 1872. | | | |
| April 20, | To ass't on 3,600 shs. Torch Lake stock at 75 | ------ | $2,700 00 |
| 1879. | | | |
| April 15, | To ass't on 3,600 shs. Torch Lake stock at 20 | ------ | 720 00 |
| June 1, | interest on above items to date, viz, $11,676.58, $1,344.52, $6.30 | ------ | 13,027 40 |
| | ⅓ interest sec. 23, including interest and expenses to July 1, 1879 | ------ | 12,844 94 |
| | | | $42,317 34 |

| | | | |
|---|---|---|---|
| 1872. | CONTRA, CR. | | |
| Dec. 31, | By balance brought forward | ------ | $10,222 51 |
| 1879. | | | |
| June 1, | To int. on $10,222.51, 6 years 5 mos., at 7 per cent | ------ | 4,591 82 |
| | balance carried forward | ------ | 27,503 01 |
| | | | $42,317 34 |
| 1879. | DR. | | |
| June 1, | To balance brought forward | ------ | $27,503 01 |

C. H. PALMER, IN ACCOUNT WITH E. T. LORING IN CONNECTION WITH STOCKS OF THE OSSIPEE, KEARSARGE, AND IROQUOIS MINING COMPANIES.

| | | | | |
|---|---|---|---|---|
| 1866. | DEBIT. | | | |
| Dec. 28, | To cash paid C. H. P. | ------ | | $3,000 00 |
| 1867. | | | | |
| Feb. 1, | To amount stock sold on acc't, Ossipee and Kearsarge Mining Co., at the lake | $78,000 00 | | |
| | 5,251 shs. Ossipee allotted to W. B. Frue and associates at $4.83⅓ | 25,379 83 | | |
| | 3,075 shs. Kearsarge allotted to W. B. Frue and associates at $2.66⅔ | 8,200 00 | | |
| | 4,100 shs. Iroquois allotted to W. B. Frue and associates at 50c | 2,050 00 | 108,629 83 | |
| | 2,595 shs. Ossipee allotted to C. H. Palmer & Son at $4.83⅓ | 12,452 50 | | |
| | 200 shs. Ossipee loaned to C. H. Palmer | 966 67 | | |
| | 1,875 shs. Kearsarge allotted to C. H. Palmer & Son at $2.66⅔ | 5,000 00 | | |
| | 2,500 shs. Iroquois allotted to C. H. Palmer & Son at 50c | 1,250 00 | 19,669 17 | |
| | 375 shs. Ossipee allotted to S. Mandelbaum at $4.83⅓ | 1,812 50 | | |

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| | | | |
|---|---|---|---|
| | 250 shs. Ossipee alloted to Peleg Hall at $4.83⅓ | 1,208 33 | 3,020 83 |
| | 1,470 shs. Ossipee allotted to A. H. Sibley at $4.83⅓ | 7,105 00 | |
| | 1,000 shs. Iroquois allotted to A. H. Sibley at 50c. | 500 00 | |
| | 750 shs. Kearsarge allotted A. H. Sibley at $2.66⅔ | 2,000 00 | 9,605 00 |

These stocks of Kearsarge and Iroquois Cos'. were subsequently assigned to S. Mandelbaum and J. H. Cotton, and the amount received for the same is credited to C. H. Palmer under dates of July 12th, 1867, and April 20th, 1868.

| | | |
|---|---|---|
| To balance | ------ | $566 67 |
| | | $144,491 50 |

| 1866. | CONTRA, CR. | | |
|---|---|---|---|
| Nov. 8, | By draft of S. Mandelbaum, on acc't of his allotment of Ossipee M'ng Cos'. stock | ------ | $1,000 00 |
| 1867. | | | |
| Feb. 1, | By total amount of drafts remitted to C. H. Palmer by Wm. B. Frue in payment of stock sold and for his interest and that of his associates at the lake | $114,299 80 | |
| | less amount in excess of cost of stock sold and allotted | 5,669 97 | 108,629 83 |
| | This balance of $5,660.97 is passed to the credit of W. B. Frue's account. | | |
| Jan. 7, | By cash from C. H. Palmer | 6,000 00 | |
| 9. | " " | 4,000 00 | |
| M'ch 28, | am't rec'd from Hall and others | 4,951 80 | |
| 29, | note of C. C. Douglass, net | 2,326 38 | 17,278 18 |
| April 3, | am't from J. H. Cotton on acc't of C. H. P. for interest in Kearsarge and Iroquois Co's | 2,812 50 | |
| | note from A. H. Sibley on acc't of C. H. P. for interest in Kearsarge and Iroquois Co's | 2,328 33 | |
| June 25, | remittance from S. Mandelbaum, bal. on acc't of Ossipee stock | 820 00 | 5,960 83 |
| July 12, | remittance from S. Mandelbaum on acc't of interest in Kearsarge and Iroquois Co's bought of C. H. Palmer, say note $1,000, draft $360.83, draft $485.05, draft $442.22 | 2,288 10 | |
| Aug. 1, | am't rec'd from A. H. Sibley on acc't of Ossipee stock | 7,104 95 | |
| 461 | | | |
| 1868. | | | |
| April 20, | By am't received from J. H. Cotton on acc't of stock bought of C. H. Palmer | 1,619 29 | |
| July 25, | am't rec'd from C. H. Palmer, Jr., per acc't of Ossipee stock | 610 82 | 11,622 66 |
| | | | $144,491 50 |
| | By balance to C. H. Palmer's private acc't | ------ | $566 67 |

462 In the Circuit Court of the United States for the Eastern District of Michigan.

CHARLES H. PALMER, Complainant,
*vs.*
ELISHA T. LORING and CHARLES A. WELCH, Defendants.
} In Equity.

STATE OF MICHIGAN, *County of Wayne.* } *ss:*

Charles H. Palmer being duly sworn deposes and says:

I am the complainant in the above entitled cause. I have examined carefully the amended account filed by the defendant Loring. I protest against the manner in which said account is prepared, so far as it introduces charges relating to stocks belonging to other persons with whom I have no privity. I protest against the charge of seventy-five shares of Kearsarge to my son, Charles H. Palmer, Jr., as no such stock was ever assigned to him.

As these items, if eliminated, do not materially affect the balance, I waive my objections to them, and, for the purposes of this accounting, accept and adopt the accounts now filed by the defendant Loring, except in the following particulars:

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## I.

### ITEMS TO BE ADDED.

1. *Franklin stock.*

The amended account entirely omits all mention of this stock. For statement of my claim in relation to it, I refer to my account and affidavit heretofore filed in this cause.

2. The omnibus account now filed, charges me with all the stock allotted to Frue. Defendant has, under date of February 1st, 1867, charged as "passed to credit of W. B. Frue's account"__ $5,669 97

This should be restored and applied to payment of Frue's stocks, together with the following items:

1868.

| | | | |
|---|---|---|---|
| July | 25, | To cash from W. B. Frue | 2,500 00 |
| Oct. | 31, | " " " | 5,004 35 |
| | | | $13,174 32 |

## II.

### ITEMS TO BE OMITTED.

1. *Expenses not chargeable to me.*

1866.

| | | | |
|---|---|---|---|
| Nov. | 3, | To expenses to Pittsburg | $50 00 |
| | 17, | sundry telegrams | 26 97 |
| Dec. | 28, | expense collecting draft on Chicago | 3 03 |
| | 31, | sundry telegrams to date | 26 23 |
| | 31, | expense copying deed | 6 25 |

1867.

| | | | |
|---|---|---|---|
| Jan'y | 12, | To express on specimens | 4 25 |
| | 12, | telegraphing | 8 91 |
| | 25, | telegraphing sundry times | 16 08 |
| Mar. | 7, | cash paid telegraphing | 8 04 |
| April | 22, | sundry telegrams | 16 10 |
| | | | $166 26 |

464 2.

1867.

| | | | |
|---|---|---|---|
| Mar. | 28, | To paid H. Bigelow, to bal. acc't with C. H. P. | $96 99 |

3.

1868.

| | | | |
|---|---|---|---|
| Feb'y | 29, | To paid S. & W. for legal services | 6 00 |

4. All charges relating to South Pewabic, Adams, Ossipee, Torch Lake, and "south half" stocks, viz:

| | | | |
|---|---|---|---|
| 1867. | | | |
| Feb'y 1, | To 2,595 shs. Ossipee allotted to C. H. P. & Son | | $12,452 50 |
| 1866 | | | |
| Nov. 1, | To ass't on 250 shs. So. Pewabic stock | | 750 00 |
| 1867. | | | |
| Aug. 6, | To ass't on 250 shs. So. Pewabic stock and interest | | 1,259 79 |
| Sept. 19, | " 1,420 shs. Adams' stock | | 2,912 90 |
| Nov. 8, | " 250 shs. So. Pewabic stock | | 757 88 |
| " 18, | " 250 shs. " " | | 1,000 00 |
| Dec. 17, | " 1,420 shs. Adams' stock | | 4,315 50 |
| 1868. | | | |
| Sept. 28, | To paid ass't on 250 shs. So. Pewabic stock | | 756 28 |
| 1869. | | | |
| Mch. 31, | To paid ass't on 1,420 shs. Adams' stock | | 1,424 14 |
| 1867. | | | |
| Feb'y 1, | To 3,600 shs. Torch Lake stock | | 5,400 00 |
| " 1, | 6,500 shs. sec. 35 and 36 | | 8,125 00 |
| 1872. | | | |
| April 20, | To ass't on 3,600 shs. Torch Lake stock | | 2,700 00 |
| 1879. | | | |
| April 15, | To ass't on 3,600 shs. Torch Lake stock | | 720 00 |
| June 1, | int. on above items to date | | 13,027 40 |
| 1872. | | | |
| Mar. 15, | By cash rec'd from sale of 2,595 shs. Ossipee stocks at $5.00 | $12,975 00 | |
| July 16, | By cash rec'd from sale of 1,420 shs. Adams' stk | 2,366 67 | |

None of these stocks were ever received by me, nor does defendant make profert of them. On the contrary, he states that he has sold them, and seeks to charge me with the consequent loss. The facts only came to my knowledge from defendant's own testimony since my former account was filed. He also now seeks to charge me with all stocks in the two properties last above named—
465 Torch Lake and "South Half,"—originally allotted to W. B. Frue, and in which allotment I have not and never had any interest.

5. He charges me in the omnibus account, under date of Feb. 1, 1867, with "200 shares of Ossipee stock loaned." This stock I never received any benefit from. In the organization of the company, 400 shares were to be donated to persons on Lake Superior. This 200 shares was by me given to the persons so entitled to it; and I expect to show by the books of the corporation that the whole 400, of which the stock sent me formed a part, were received by defendant Loring gratuitously.

## III.

### DISCOUNTS AND INTEREST.

I should be charged with discounts only when they were necessary to make good my account. Whatever notes of mine in defendant's hands were discounted beyond this, were so used for his accommodation purely.

I should be allowed interest when balances were in my favor, and charged interest when against me, but the rate should be the same on both sides of the account. I acquiesce in the method adopted by the defendant in computing interest—making annual rests at the beginning of each year.

IV.

COST OF PROPERTY IN SUIT.

The cost of my interest and my share of subsequent disbursements should be carried into my account at the time of the respective payments, omitting the charge for money paid Dan. H. Ball for preparation of Frue's deed and stamps, now included in defendant's account.

Signed CHARLES H. PALMER.

COUNTY OF WAYNE, } ss:
*State of Michigan,* }

Sworn to and subscribed to before me, this fifteenth day of May, A. D. 1880.

HERSCHEL WHITAKER,
*Notary Public.*

466 In the Circuit Court of the United States for the Eastern District of Michigan. In Equity.

CHARLES H. PALMER, Complainant,
*vs.*
ELISHA T. LORING *et al.*, Defendants.

Testimony taken at Detroit, Michigan, May 15th, A. D. 1880, at two o'clock p. m., before Herschel Whitaker, Esq., special examiner:

At the hearing Mr. S. F. Saeger and Mr. Hoyt Post appeared on behalf of the complainant, and Mr. C. I. Walker on behalf of the defendant, Loring.

Charles H. Palmer, complainant, being sworn on his own behalf, testified as follows:

Examined by Mr. POST:

Question. You are the plaintiff in this cause?

Answer. Yes, sir.

Q. You have examined the amended account filed by Mr. Loring to-day, or a copy of it?

A. Yes, sir.

Q. Did you have any books of account in which these matters were entered at all, of your own?

A. No, sir; I did not.

Q. None of them?

A. None of them, whatever.

Q. And what is the source of your knowledge with reference to the matter of these accounts?

467 A. My only source of knowledge is the accounts furnished me by Mr. Loring.

Q. Statements of account?

A. Statements of account and my memory with regard to it.

Q. In regard to the matters to which they relate?

A. Yes, sir.

Q. Have you examined this amended account with some care?

A. Yes, sir.

Q. You have made an affidavit and filed it in the case with reference to it?

A. Yes, sir.

Q. State whether, so far as you know, the account is correct, except the matters in the affidavit excepted?

A. I believe it is; yes, sir. Perhaps there should be one exception.

Q. There is an exception in the affidavit as to your son's allotment in the Kearsarge?

A. I thought that was excepted in the affidavit. Mr. Loring is mistaken about the allotment to my son.

Q. You waive that matter, however?

A. It is a small matter. It amounts to only a hundred dollars or so.

Q. With reference to the Franklin stock, what have you to say?

As stated in a former affidavit, I believe there is a large balance due me on the Franklin account. I now believe there is, but as I am advised that if I was to recover in this suit for that it would be of no advantage to me, I think better to withdraw that account and not spend time on it in this case; to withdraw it entirely.

Q. Coming next to the omnibus account, now filed as an exhibit to the amended account—the omnibus account, or the land account, now filed by Mr. Loring with the amended account; I see there is a charge in that account under date of February 1st,

468 1867, as passed to the credit of William B. Frue's account, an item of $5,669.97. Will you state whether that item has ever appeared before in any statement of account furnished you?

A. No, sir; this is the first instance I have ever seen anything of that kind.

Q. Do you know whether, in addition to this item of $5,669.97, there was any further money received by Mr. Loring from Captain Frue, subsequently, that was not charged in this omnibus account as now presented?

A. Yes, sir; there were $2,500 received by Mr. Loring.

Q. At what date was that?

A. That was July 25th, 1868—a credit on Ossipee assessments.

Complainant's counsel now offers in evidence a paper which is

marked Exhibit 110, to which is attached four enclosures, of which the following are copies:

OFFICE OF THE SOUTH PEWABIC COPPER CO.,
No. 31 KILBY STREET,
BOSTON, *Nov. 4th*, 1868.

WILLIAM R. NOBLE, Esq., Houghton.

DEAR SIR: Enclosed please find treasurer's receipts for balance due ($1,282.90) Kearsarge Mining Co. from Wm. B. Frue and associates on account of assessments, also his receipt for $3.721.45 on account of assessments due the Ossipee Mining Co. from the same parties, leaving still a balance due October 31st, $1,159.45.

I herewith remit memorandum of sales of his Calumet stock, and suffice to say I done the very best I could with it.

Your letter of the 19th, with his account, was duly received, and in reply would remark that you have misapprehended the nature of the accounts presented. They were simply between Wm. B. Frue and his associates for assessments due to the companies, which cannot with any propriety be mixed up with the affairs between him and Mr. Palmer or myself, I hope, ere this Capt. Frue is able to resume his duties.

Yours truly, E. T. LORING.

| | | | |
|---|---|---|---|
| 469 | 96 shares Calumet stock sold at $50.00 | | $4,800 00 |
| | 4 " " " 55.00 | | 220 00 |
| | | | $5,020 00 |
| | Less am't paid Head & Perkins' expense of sale | | 15 65 |
| | | | $5,004 35 |
| | A'mt paid account Kearsarge Co. | $1,282 90 | |
| | " " Ossipee | 3,721 45 | |
| | | $5,004 35 | |

WM. B. FRUE AND ASSOCIATES,
To KEARSARGE MINING CO., Dr.

| | | |
|---|---|---|
| For ass't on 774 shs. at $1.50 | $1,161 00 | |
| For int. on $1,161 from Feb. 1, 1867 to Oct. 1, 1868 | 116 10 | |
| | | $1,277 10 |
| Interest 1 month | | 5 80 |
| | | $1,282 90 |

KEARSARGE MINING COMPANY,
BOSTON, *Oct.* 31, 1868.

Received from E. T. Loring tr. account W. B. Frue and others, twelve hundred and eighty-two dollars 90-100, the same being in

full for the first assessment of two dollars a share upon 774 shares of the capital stock standing in his name.

$1,161 00
121 90 interest, at 6 per cent.

$1,282 90

LAFAYETTE BURR,
*Treasurer Kearsarge Mining Co.*

470

OSSIPEE MINING COMPANY,
BOSTON, *Oct.* 31, 1868.

Received from E. T. Loring, tr. acc't with W. B. Frue and others, thirty-seven hundred twenty-one dollars 45-100, the same being on account of 1st assessment of 3½ dollars a share upon 4,490 shares of the capital stock standing in his name.

Interest at —— per cent.

$3,721.45.

LAFAYETTE BURR,
*Treasurer Ossipee Mining Co.*

W. B. FRUE AND ASSOCIATES,
TO OSSIPEE MINING CO., DR.

| | | |
|---|---|---|
| For ass't on 4,490 shs. at $1.50 | | $6,735 00 |
| For int. on $6,735 from Feb. 1, 1867, to Oct. 1, 1868 | | 673 50 |
| | | $7,408 50 |
| CR. | | |
| By cash July 25th, 1868 | $2,500 00 | |
| By int. to Oct. 1st, 1868 | 27 60 | |
| | | $2,527 60 |
| | | $4,880 90 |
| By cash Oct. 31, 1868 | | 3,721 45 |
| | | $1,159 45 |

It is admitted that Exhibit 110, the letter, is in the handwriting of Mr. Loring.

Counsel for defendant objects to Exhibit 110 and its enclosures, on the ground of incompetency and irrelevancy.

Q. I come next to the several expense items referred to in your affidavit as "expenses not charegable to me," under the second head of your affidavit of items to be omitted. There are ten items of entries, for expenses to Pittsburgh, and for telegrams, and expense of collecting draft on Chicago, footing $166.26.

471 A. Those expenses were provided for by agreement among the parties to these companies, to be paid by the assessment on the Ossipee, $1.50 a share, of which $5,000 over the payment of $25,000 was to be used for the purposes of these expenses, to pay for the 400 donated shares, and to pay me $2,500 for

my services. If the account was not so kept, then these expenses belong proportionately to all of the parties. They did not belong to me any more than to any other person; they belong in the land account. They were in the land account, and belong in the land account.

Q. They were incurred with reference to what?

A. With reference to the Kearsarge and Ossipee.

Q. They related to the organization of those companies?

A. Yes, sir.

Q. These items were embraced in what account, as presented to you by Mr. Loring, what statement of account?

A. They were in the land account—the omnibus account.

Q. Connected with these companies?

A. Connected with these companies.

Q. I will ask you whether you instructed Mr. Loring to charge those items to your individual account?

A. No, sir; I did not.

Q. Mr. Loring testifies that these items were with reference to matters which you were engaged in independent of these companies, independent of the stockholders of these companies; is that true?

A. No, sir. That unnoubtedly was a mistake, you know. I don't think he meant to say that.

Q. Now I want you to get a little more clearly at what fund it was you say was provided for to pay these expenses and for the donated stock?

A. The cost of the land bought in New York of Douglass was $25,000, and an assessment of a dollar and a half was put on to pay for that.

Q. That is a dollar and a half on twenty thousand shares?

A. Yes, sir; making $30,000.

472 Q. Making a surplus?

A. Of $5,000.

Q. Over and above the cost of the land?

A. Yes, sir.

Q. This $5,000?

A. This $5,000 was in the assessment for the purpose of paying for the donated stock, 400 shares, and paying for these little expenses, telegrams, etc.; that is half of it, which would leave a surplus on that half. The other half was to be paid for me for my expenses and for negotiating that purchase.

Q. And that $2,500 is credited to you in the account?

A. Yes, sir; I received it.

Q. I come next to the item of March 23d, 1867, "Paid H. Bigelow to balance account with Chas. H. Palmer, $96.99;" I will ask you where that item first appeared?

A. That appeared in the land account.

Q. By "land account" you mean this omnibus account?

A. Yes, sir.

Q. Exhibit 48 is what you mean?

A. Yes, sir.

Q. You may explain, if you please, how that item arose?

A. That item arose, as it was explained to me by Mr. Bigelow at the time, that he had overpaid his account that much. I knew nothing of it excepting what Mr. Bigelow told me; and his reference to that 99 cents, he said he spent two hours settling with Mr. Loring, and he said he would have it right to a cent.

Q. What do you mean?

A. His account in the land account.

A. He was one of the associates in these various companies?

A. Yes, sir.

Q. And it was a repayment?

Mr. WALKER. I object to this mode of examining the witness. The examiner is making his statements of fact instead of asking questions. I object on the ground that it is incompetent and improper.

473 Q. Whether that is your explanation of that, that it was an overpayment on the stocks allotted to Mr. Bigelow & Co.?

A. That is what was stated to me. I knew nothing about Mr. Bigelow's account. I know now that he had not paid his account.

Q. Mr. Loring testifies that that deduction was made at your dictation?

A. It was not. I had nothing to do with it; it was accidentally that I knew of it.

Q. Taking the land account and deducting this amount from the amount which Mr. Bigelow is credited in the land account with having paid, would the balance pay for the stocks allotted to him?

A. It would lack fifteen hundred and odd dollars.

Q. Did you collect the moneys from Mr. Bigelow on this account?

A. No, sir; never.

Q. Was this $96.99 paid to you?

A. No, never.

Q. I come next to the item of 1868, February 29th, "Paid Sohier & Welch for legal services, six dollars;" you have seen that item before?

A. I have seen it. I never knew of it until the examination; what it was for.

Q. Until the examination of whom?

A. Mr. Loring.

Q. Last summer?

A. Yes, sir.

Q. I come now to the several charges relating to the several stocks and their assessments, South Pewabic, Adams, Ossipee, Torch Lake, Sections 35 and 36, or Penn, as they are variously called; I will ask you whether you received any of the stocks which enter into this account?

A. No; I never received any.

Q. For which these assessments are charged here?

A. No, sir; nothing whatever.

474 Q. Did you ever receive the proceeds of the sales of those stocks?

A. No, never.

Q. Or of the interchange of them with other properties?

A. Never.

Q. Or of the consolidation of them with other properties?

A. Nothing; nothing.

Q. I will ask you with reference to the auction sale of these stocks about which Mr. Loring testified, made by Henshaw & Bro., had you any notice of that sale?

A. No, I had not. I had no notice of the sale. That is, the printed notice that was sent to me went to Houghton and from there to Silver Islet, and it reached me in the month of November, I think. The sale was on September 30th.

Q. Mr. Loring speaks of having forwarded a notice at four different times, in an envelope?

A. I received two letters only, with a printed slip, nothing in the letters except the printed slip.

Q. To explain what that printed slip was, I will ask you whether it was a copy of Exhibit No. 83?

A. It was a printed slip containing that, nothing else was in the letter except that printed slip; both of those letters went to Silver Islet before they reached me.

Q. Did they reach you before or after the date that the sale was advertised to take place?

A. After; there is a letter here somewhere that refers to when I did receive them.

Q. Referring to your letter to Mr. Loring, Exhibit 87, in which you state, "I arrived home Saturday night and found your letter of the 20th. I received one before, in which you repeat a conversation with me while in Detroit, not in accordance with the fact. I said I received an envelope containing a printed slip which was received by me about the 1st of November;" whether the statements in that letter are the facts with reference to when the letter was received?

A. Yes, sir; that is correct.

475 Q. Do you remember with reference to the time when the other one was received?

A. No, I do not. I am not sure now that both of these letters went to Silver Islet. But the other one did, as I have the letter and the envelope.

Q. I think you have it, hav'n't you?

A. Yes, I think it is here. And the other envelope I hav'n't now, but that is undoubtedly a correct statement of the fact.

Q. In this same letter you further say, "I do not see of what importance this is, or why you should have sent to me any notice whatever, of the sale of this stock;" will you explain what you meant by that?

Objected to as incompetent.

A. When Mr. Loring commenced the omnibus account, I objected to his putting that account in my name, and I afterwards, upon the first intimation that he was to treat the account as belonging to me, I told him it would be an outrage; that there was nothing to justify any such conduct. But he, in spite of my protests, proposed to confiscate all my stocks upon a balance claimed in that account. And I thought it was a further outrage for him to go into the formality of a notice after I had protested against that account.

Q. You saw Mr. Loring in Detroit, in October, 1870?

A. Yes, sir.

Q. That was a few days after the sale?

A. Yes, sir, in October I think.

Q. Mr. Loring testifies that he stated to you in Detroit, in October, 1870, that he had bought all the stock at the pretended sale of collaterals; had it in his possession, and he wonld be glad to have you settle your accounts and take this stock?

A. He did not say any such thing to me.

Q. Did you receive that letter from Mr. Loring about the time of its date?

(Handing a paper to witness.)

A. I received this. It is dated at the Russell House.

476 The letter is offered in evidence and marked Exhibit III, the follswing being a copy:

RUSSELL HOUSE,
WITBECK & CHITTENDEN, PROPRIETORS,
DETROIT, *Oct.* 5, 1870.

MR. PALMER.

DEAR SIR: While here I forgot to ask your signature to the enclosed certificate. Please sign *on receipt* and send to New York immediately to my address, care of A. H. Sibley. Don't fail nor delay to do this, as I want it before I leave N. Y. In haste,

Yours, E. T. LORING.

Q. That letter is in Mr. Loring's handwriting?

A. Yes, sir, that is in his handwriting.

Q. State, if you please, whether the subject mentioned in that letter, of the certificate therein referred to, was mentioned in your interview with Mr. Loring in Detroit?

A. Let me look at the letter again.

Letter handed to the witness.

A. No, sir, it was not.

Q. Are you able to point out in the record the letter that was sent in reply to this?

A. That letter was answered very soon after. It is in the record.

Q. Is Exhibit 85 the letter to which you refer? (Showing the printed record of the testimony to the witness.)

A. Yes, sir, that is the letter.

Q. Can you state what letter in the record is a response to that letter?

A. Yes, sir; the one of October 12th.

Q. That is Exhibit 86?

A. Yes, sir.

Q. What letter was written in response to Exhibit 86?

A. That is the letter, Exhibit 87.

Q. In whose handwriting is that letter?

A. This is Mr. Loring's handwriting.

477 Letter offered in evidence and marked Exhibit 112, of which the following is a copy:

TREASURER'S OFFICE, No. 11, CHANGE AVE.,
BOSTON, *April* 22, 1872.

WM. R. NOBLE, *Houghton.*

DEAR SIR: I have your favor of the 9th, and note contents. In reply to your remark that you "sent to C. H. Palmer, in November, the year the land was purchased, $3,000 in cash, for which you have my receipt." On the presentation of this receipt I will respond to you for the amount named and interest. In the absence of this receipt I beg to refer you to C. H. Palmer, to whom you say you sent the money, I not being aware that I have ever acknowledged myself responsible for funds sent to said Palmer. The stock you refer to was held by agreement with him, as collateral security for said Palmer's indebtedness to me, which he declined or refused to settle, consequently the stock in question was sold a long time since, at public auction, and the proceeds placed to said Palmer's credit, he having been notified some months previous to the sale, that this would be done unless my account was settled.

Yours truly, E. T. LORING.

Q. You may state whether, at the interview in Detroit, in October, 1870, with Mr. Loring, he tendered you those stocks which had been sold at auction?

A. No, he did not.

Q. Did he state to you that you could have them on paying his account?

A. No, he did not. He never stated to me but what he had sold them.

Q. Did you know at that time that he controlled those stocks?

A. No, sir; I did not.

Q. Were those stocks tendered to you at any time?

478 A. No; they were not. No, sir, the only thing that I know in regard to it is a letter that is in evidence. I don't know of anything else that looks in that direction.

Q. Mr. Loring testifies that there were subsequent sales made of

these stocks; dispositions of them all, I believe, but the Kearsarge; did you have any notice of those sales and dispositions?

A. No, sir; I did not have any notice; none whatever.

Q. Did you know at the time, of the sale to Clark—sale of the Ossipee?

A. No, sir; I did not.

Q. Did you know at the time, of the sale to Stanton of the Adams?

A. No, sir; I did not know anything about it.

Q. Did you know at the time, of the consolidation of the Torch Lake and sections 35 and 36, or South Half?

A. I did not; I never heard of it until this testimony was taken.

Q. Did you know at the time, of that consolidation of the Adams and South Pewabic?

A. I heard it probably some time after it took place, that is, a mere rumor. I never knew anything of the particulars.

Q. Were you consulted with reference to these sales or changes in the stocks?

A. Nothing; no word of it came to me.

Q. When did you first learn the particulars of the disposition of these stocks which Mr. Loring held?

A. I never learned the particulars until the testimony in this case was taken; I knew something by rumors, but I knew nothing in particular about it.

Q. Had you set on foot an investigation with reference to the auction sale?

A. Not before the commencement of this suit.

Q. Had you ever been advised by Mr. Loring of these transactions before this testimony?

A. No, never.

Q. Now I will ask you with reference to this omnibus or land account, Exhibit 48, whether that account was kept in that shape at your dictation?

479 A. No, sir, it was not. I had objected to that account.

Q. When?

A. When it was commenced I objected to it. When he placed it in my name I objected to it.

Q. State, if you please, what was said about it at that time?

A. I told him that I preferred not to have my name connected with it, and I was very much afraid he would get the account mixed and there would be confusion growing out of it. But Mr. Loring said that he had used my name to designate the account for his own convenience, and he explained it to me in that way. In June, 1867, he explained it in the same way to Capt. Frue and Mr. Noble; said I had objected to his putting the account in my name, using the name to designate the account. He then said he only put it in that way for his own convenience.

Q. State whether the effect of keeping the account in that way confused you?

Objected to as incompetent.

A. Well, yes, it did confuse me. I was at sea about that account.

Objected to as incompetent and leading. These questions are all leading.

A. And after the settlement with Frue I gave no attention to that account.

Q. When did you first give close attention to that account?

A. It is only recently that I have given close attention to it. I am not familiar with accounts, and I am very slow to understand accounts. My accounts were very much confused by the use of notes which complicated my accounts, and he disguised the true state of my account, because the land account, my account, and all the notes were together.

Q. Mr. Loring testifies that it was the understanding up to June, 1867, that you and Frue were co-partners; what have you to say about that, with reference to these investments?

A. I could not understand anything about that, because
480 we were never co-partners; whatever interests we had were always distinct, and I acted no more with Capt. Frue than I did with Mr. Loring; had no other relations with him than I did with Mr. Loring.

Q. Mr. Loring has presented what he calls a trial balance, or a statement of the allotment of the Ossipee stock, Exhibit 14; what can you say about that?

A. So far as I am concerned it is correct. It is not correct in regard to the others in all respects. The designation "paid in part" is all incorrect.

Q. You refer to the memorandum at the right of the exhibit?

A. Yes, sir, to those memorandums.

Q. I come now to the Adams stock; what amount of Adams stock were you to have?

A. I had a thousand shares in his hands as trustee.

Q. How many had he as trustee altogether?

A. He had 1,420.

Q. For whom did he hold the other 420?

A. For Capt. Frue.

Q. Is that letter in Mr. Loring's handwriting? (Showing a paper to witness.)

A. Yes, sir.

Paper offered in evidence, and marked by the Master Exhibit 113; the following is a copy:

SOUTH PEWABIC COPPER COMPANY,
TREASURER'S OFFICE, No. 11 CHANGE AVE.,
BOSTON, *Nov.* 9, 1867.

C. H. PALMER, Esq., Houghton.

DEAR SIR: Since mine of the 6th I am in receipt of yours of Nov.

3d, and note contents, and agreeable to your penciled remarks I called on Bigelow and showed him your letter, which he thinks rather an important one, and remarked he would endeavor to ascertain who owns south quarter sec. 5, and let me know. He thinks we should have the full quarter, instead of the 40, as you suggest, and I agree with him in this. The price *asked* for Mesnard engine is
481 $75,000. Referring to mine of Nov. 2d, on finances, you will perceive there is *over* $80,000 due in November and December, without any demands from the mine. On top of this comes Mr. Noble's request (request) for some $16,000 currency. These facts are forcible appeals on the necessity of something being done; on having balances due from parties at the Lake, lying over on interest; and still more necessity of having the balance of assessments due on the 14th, the *last* day of grace, collected, being near $6,000 from stockholders at the Lake, to say nothing of the 4 dollar assessments due on the 16th from same parties, making about $8,000 more. I have of my own more immediate and necessitous friends, as many as I can provide for, what with the *large amounts* already loaned to the Company, has used me up financially, therefore folly for *any* of these gentlemen to suppose the amount due from them can lay over to suit their convenience. This is a matter I hope you will see the necessity of doing all in your power in aiding the collection of these assessments, and all not paid on or before the 14th, should be advertised for sale *at once.* As *soon* as I can see my way clear to meet the payments due at bank, which must be paid at all hazards, I will endeavor to remit Mr. Noble for pay day some $10,000, if possible, and he must not expect more than this.

I yesterday used one of your notes filled up for $5,000, at 4 mos., and paid out for assessments due on S. P. and Adams stock, and shall endeavor to get more money on them as soon as I can, to pay further assessments due on *your* and *Frue's* stock; this I will provide for if possible. I have now been at home two weeks, and expected ere this to have received from you some satisfactory solution in the question of J. C. H. salary. This subject must soon be placed before the directors, and *I only await your advices. No stock received from Sibley yet.*

Yours, truly, E. T. LORING.

Q. I will ask you if that letter is in Mr. Loring's handwriting?

(Showing a paper to the witness.)

A. Yes, sir.

482 Q. If it was received by you about that date?

A. Yes, sir.

Paper referred to is marked Exhibit 114, and offered in evidence, the following being a copy:

SOUTH PEWABIC COPPER COMPANY,
TREASURER'S OFFICE, No. 11 CHANGE AVE.,
BOSTON, *Dec.* 9, 1867.

C. H. PALMER, Esq., *Pontiac.*

DEAR SIR: Your despatch from Green Bay was duly received; also yours of December 3, from Chicago. I have also a despatch from Frue, same date, saying: "Three heads running, trouble with pump will soon be overcome." Six days since elapsed and *no advice* that affords me the least aid in obtaining funds. If I could say to my friends, the mill was in successful operation, turning out four or five tons copper a day, our affairs would move along very easy.

From the tenor of your note of the 3d, I know not *when* this uncertainty is to end, for it appears there is trouble with air pump as well as water pump. I do not mean to be unnecessarily alarmed, still when I state, our payments for the next two weeks, viz: This, about $2,000 or over; next, over $22,000 already on books, you will see there is some cause for apprehension, and however "cool" I may keep, something is to be done to get the money. I enclose two notes for you to sign to pay your and Frue's assessments on Adams stock.

Yours, truly, E. T. LORING.

You do not say whether closed that contract with Edwards, and I rather hope you did not.

E. T. LORING.

Q. Here is one of December 24th, 1867, is that in Mr. Loring's handwriting?

A. Yes, sir.

Letter offered in evidence marked Exhibit 115, of which the following is a copy:

483 SOUTH PEWABIC COPPER COMPANY,
TREASURER'S OFFICE, No. 11 CHANGE AVE.,
BOSTON, *Dec.* 24, 1867.

C. H. PALMER, Esq., *Pontiac.*

DEAR SIR: Your two favors of the 11th, from Pontiac, were duly received, and contents carefully noted. These are so much in contrast with the feelings on Lake matters in this city, that I am forcibly reminded that we *should not* make haste for anything except money and copper to pay our debts. From present appearances we shall soon be able to buy almost everything for nothing, or little less. For instance, Pewabic has recently called $3 assessments. With this paid it has since sold at the board at $1.25, making $1.75 worse than nothing, as it stood a short time since. These depressions on the whole interest has a most depressing effect on my means to raise wherewith to meet our obligations, and I yesterday telegraphed Frue, "draw no more drafts," and wrote him fully my instructions on the course he was to pursue, and I think it would

be well to write him that he *must* follow them or we sink. The prospect that "the S. P. is to be a great mine," will not help us unless I have copper certificates in my hands as evidence of its greatness. Frue has kept me fully posted of his difficulties, the greatest of all is the trouble with the pump, and still greater a want of washing power.

Yours, E. T. LORING.

Those notes were received. One is used to pay your and Frue's assessments, and another soon will be used. My compliments to Mrs. P. and family, wishing them all a merry Christmas.

E. T. L.

Q. State, if you please, whether there is a charge in the account, as now presented, and other statements of account that have been presented, an item of December 17, 1867, for assessments on 1,420 shares of Adams stock?

(Shows a paper to witness.)

A. Yes, sir.

Mr. POST. The amount of that assessment is $4,315.50?

484 Q. Do you remember Exhibit 103, a statement of account of Mr. Loring's showing that of Adams stock you had a thousand shares and Frue 420?

(Showing printed testimony to the witness.)

Q. Yes, sir.

Q. Do you remember the circumstances under which that was procured?

A. I obtained that from Mr. Loring; he gave that to me himself, because I had objected to paying Captain Frue's assessment on Adams stock, and he gave that to me to show I had paid it, because I had objected to his charging me.

Q. Do you remember about what time that was procured?

A. Is there any date on it?

(Printed testimony shown to witness.)

A. That was late, probably, in 1868.

Q. Mr. Loring states, in answer to a question with reference to these charges for assessments on Adams stock, being in Exhibit No. 6, as to whether you made any objection to the charge made against you for the payment of assessments on that number of shares; he answers "none whatever."

A. I did object, sir; that is the reason why I got that paper.

Q. The paper Exhibit 103?

A. Yes, sir; I got that from him.

Q. Do you know what price Adams stock sold for prior to this auction sale?

A. I think there had been sales at twelve and thirteen dollars a share prior to this auction sale.

A letter is now shown to the witness dated December 31st, 1866, purporting to be written by William B. Frue to Chas. H. Palmer, and the witness is asked:

Q. Is that the original of which Exhibit 78 is a copy?

A. Yes; this is the original. I say generally that none of those letters I had. All went to Mr. Loring; he had them as much as I did.

Q. I call your attention on that letter, to the words opposite the item "Wm. B. Frue on A. H. Sibley, December 31st, 1866,
485 $6,901.48," the words: "delivered to C. H. P." Whose handwriting is that?

A. Mr. Loring's handwriting.

Q. Do you know when that was put there?

A. It was put there soon after I received it.

Q. State, if you please, whether that whole letter was in Mr. Loring's hand?

A. It was; yes, sir.

Q. State what, if anything, you know about Mr. Hadley having made a partial copy of it?

A. I don't remember anything about that. I had no direct dealing with Mr. Hadley.

Q. What is the fact with reference to that draft having gone into Mr. Loring's hands?

A. It went into Mr. Loring's hands, and the letter itself requests that I should retain that draft to await Mr. Sibley's convenience in paying it, not to press him, and for that reason Loring gave me that draft and he afterwards collected that draft.

Q. At the time he had that letter where were the enclosures?

A. I received the enclosures, you know, in this letter, and I gave them all to him.

Q. The letter and enclosures?

A. Yes, sir. I was very particular to give them to Mr. Loring, because the accuracy of the the thing depended upon his knowing exactly what these letters contained.

Q. This original letter which I have shown you, and of which you say Exhibit 78 is a copy, is an exhibit in the Frue and Loring suit, is it not?

A. Yes, sir.

Q. There was an interest in certain properties furnished which are variously referred to in the record as Torch Lake, sections 35 and 36, the South Half, and Penn; will you explain what those properties were?

A. There were two properties of those properties.

Q. Of what sections?

486 A. Sections 35 and 36. The South Half was the south half of the properties, and Torch Lake was the north half.

Q. What was Penn?

A. Penn was used variously. It comprehended the whole. It

was a telegraph term, used for the purpose of keeping our movements concealed.

Mr. SEAGER:

Q. An abbreviation?

A. An abbreviation.

Mr. POST:

Q. What was the cost of the entire purchase which you, yourself, Frue, Loring, and associates made in those two properties?

A. The cost was $23,700.

Q. What proportion of that purchase price appears in the land account, Exhibit 48?

A. It is all in the land account with the exception of $4,450 paid for by Frue's draft upon the Grand Portage. The whole is charged in the land account, that is credited to Mr. Loring, $19,250, which with that $4,450, makes $23,700, which is the entire cost of all the purchases made.

Q. Mr. Loring testifies that he protested against the purchase of this Torch Lake and South Half property, and that he had no correspondence whatever with Sibley upon this subject.

(Showing a paper to the witness.)

Q. Will you state what that is?

A. This is a letter written by me to Mr. Sibley in New York.

Q. Written where?

A. It is written from Boston, from Mr. Loring's office. A letter of instructions with reference to the purchase of Torch Lake.

Q. Did Mr. Loring know anything about that letter?

A. This letter was shown to Mr. Loring. It was written at his office. It was shown to him, and was a letter of instructions to Mr. Sibley with reference to making that purchase.

487 Q. What other correspondence was there between you and Sibley with reference to making this purchase?

A. I did the most of the correspondence, and was in New York and Boston often.

Q. Did Mr. Loring know anything about it?

A. He saw all the correspondence, that is I kept him advised as much as I was myself, and had some correspondence with Mr. Sibley.

Complainant's counsel offers in evidence the letter just shown to the witness, which is marked Exhibit 116, the following being a copy:

ADAMS MINING COMPANY,
TREASURER'S OFFICE, No. 11 CHANGE AVE.,
BOSTON, *March* 14, 1867.

A. H. SIBLEY, Esq.

DEAR SIR: I have your letter of yesterday. If Farnsworth is moving all right, this is all I want—that is, have him do some-

thing; it is a good time to act in Providence, as it must be very blue there. It will not do at this time to go over $1.50; it is so blue here that it will not do to raise the price we have set.

The $4,450 I placed in your hands for collection on Grand Portage, and which is due on the 17th, ought to be used in the purchase of T. L., as this sum was sent down on the general account, and was sent me by Loring for collection. I have a private draft on you by Frue, which you know I am holding to accommodate you. We have paid for you all the cost of Ossipee and one-fifth of cost of section 6; hence you will see that you ought not to draw on Loring till the $4,450 are first used, as if it is needed before the 17th you have had the use of the other money long enough to make up all interest in your favor. The money drawn on Loring, and the $4,450, is all on account of the purchase of the S. half of sections 35 and 36 and the stock in the N. half of the same. Mr. Loring is responsible to the parties in interest who have paid to him this money, and it will be well when you draw on him to send to him a written statement of the amount bought with this
488 money, that he may have a memorandum of the transactions; this statement should include the interest of Hall and the old parties that go in with us, so that we know the progress we are making.

In regard to the 5,000 shares, if Green offers at $1.75, I should want you to advise with me in the matter, so that I can see what the parties here will say.

The over issue in Copper Falls is in one case 1,700 shares, and in another 2,000, making 3,700 shares. It is said that John Leighton is pledged to take up this over issue. Copper Falls is worth about $45 with good management. No prudent man here knows whether to buy or sell at these prices, now $22 or $22½. I should not touch it, though I am of the opinion that the chances are in favor of a large advance in the stock at some time.

Truly yours, C. H. PALMER.

Q. Mr. Loring testifies that the consolidation of Torch Lake and South Half, or the sale of South Half to Torch Lake, which he testifies was afterwards made, was made upon your authority and in accordance with your instructions; what have you to say about that?

A. I think I wrote Mr. Loring from New York, when making those purchases, it would be a good thing to consolidate them.

Q. How long was that before the purchase?

A. I think that was April 11th, 1867.

(The printed record is here shown to the witness.)

Q. I ask you whether the letter of April 11th, on page 53 of the printed testimony, which is Exhibit No. 33, is the letter to which you refer?

A. That is the letter; yes, sir.

Q. How long was that before?

A. That was right during the purchase of this stock.

Q. Did you ever give any other directions or instructions with reference to this consolidation than what is contained in that letter?

A. Never.

Q. Mr. Loring states that it was upon your statement and
489 at your request that the shares of Torch Lake were allotted to Capt. Frue; what have you to say about that?

A. Well, my recollection is that Mr. Loring himself divided that stock, assigning to Capt. Frue 3,500 of South Half and 2,600 of Torch Lake. No, it was 3,000 that he assigned, and I think perhaps that I made the suggestion to him afterwards that in assigning 3,500 to me, it was a little out of proportion, and it would be better that Frue should have $3,500. I think he made out a bill to Capt. Frue of that amount; but Mr. Loring divided that stock himself.

Q. I refer to Exhibits 40 and 41, attached to the declaration of trust from Sibley; I will ask you where you first saw those?

A. I first saw them here.

Q. When?

A. In this case.

Q. When?

A. When you showed them to me.

Q. Well, about when—what year?

A. This year, I think—1880.

Q. Since we returned from Boston?

A. Yes, sir; this declaration of trust I sent on in reply to a telegram from Mr. Loring, from New York.

Q. Sent it on how?

A. By mail.

Q. I will ask you if that is the telegram to which you refer?

(Exhibiting a paper to the witness.)

A. Yes, sir.

Q. Where was that received by you?

A. I received that in New York.

Q. And in response to that, did you send on to him by mail the declaration of trust, Exhibit 39?

A. Yes, sir.

Complainant's counsel offers in evidence the telegram, which is marked Exhibit 117, the following being a copy:

490 11:37.

(Dated) BOSTON, *May* 23*d*, 1867.

Received at 145 Broadway, May 23d.

To C. H. PALMER, 22 Pine st.

Send the declaration trust to me by mail; nothing new. 10B, 30. Paid. E. T. LORING.

Q. Exhibit 41 purports to be dated May 24th, 1867; were you in Boston on that day?

A. No, sir; I was in New York.

Q. Are you able to state what day the telegram, Exhibit 117, was received by you in New York.

(Telegram shown to witness.)

A. It was received on the 23d.

Q. How much of the Torch Lake stock were you to have had?

A. I was to have had a thousand shares of Torch Lake.

Q. And that is all?

A. And that is all.

Q. How much were you to have had of South Half, or what Mr. Loring terms sections 35 and 36?

A. I was to have had 3,500 or 3,000 shares.

Q. There was some discrepancy between you and Frue as to which was to have the largest?

A. Yes, sir; if he had 3,500, why I would have had 3,000; and bills were made out both ways.

Q. How much of Torch Lake was Frue to have had?

A. He was to have had 2,600.

A. And the balance of these stocks of both properties, were they allotted to other people?

A. They were all allotted—every share—yes, sir.

Q. In the letter, Exhibit 111, was there enclosed to you a certificate of Torch Lake stock?

A. Yes, sir.

Q. And whether that was the same certificate which was put in evidence, being Exhibit 42, certificate No. 66?

A. Yes, sir.

491 Q. Did that certificate belong to you?

A. No, sir; never.

Q. How came it to stand in your name?

A. It was put in my name for the purpose of reorganizing the company at New York, and using it in electing directors. It was used for that purpose.

Q. Were you aware at the time this letter came that that stock still stood in your name?

A. No. I had forgot that.

Q. In what shape was the stock in Torch Lake which was allotted to you at this time, in whose name did it stand?

A. Mr. Loring had it all, and I supposed it was in his name.

Q. In whose possession was this certificate No. 66?

A. Mr. Loring's.

Q. You made no claim to own that?

A. No.

Q. On the back of Exhibit 41, Mr. Loring states that 3,000 shares allotted to Wm. B. Frue, and 3,500 shares to C. H. Palmer, and that the 6,500 shares are pledged as collateral for any indebtedness

of said Palmer to E. T. Loring; I will ask you whether that statement was authorized by you?

A. No, sir.

Q. I will ask you whether you gave Mr. Loring authority at any time, to put as collateral to your indebtedness to him, any stocks which were allotted to Capt. Frue?

Objected to as leading.

A. No, I did not.

Q. At the foot of Exhibit 40, which contains a statement of 6,600 shares of Torch Lake, is a memorandum: "Until paid for to be held as collateral. E. T. L." I will ask you whether that was by authority from you?

A. No, sir; I had no knowledge of it.

Q. I will ask you whether you had any interest in Capt. Frue's stock, in Torch Lake or South Half?

A. No, sir; I had no interest in any of his stocks.

Q. Do you know of Mr. Frue's having repudiated the purchase of Torch Lake or South Half?

492 A. No, sir; nothing of the kind.

Q. I will ask you now with reference to these 200 shares of stock which Mr. Loring has charged to you as having been loaned to you by him; what did you do with that stock?

A. I gave it to Captain Frue, who passed it to those to whom it had been donated, as was the original agreement.

Q. To whom what had been donated?

A. This stock of the Ossipee.

Q. You don't mean these specific 200 shares?

A. It went to King and Peters, 100 each, who had been promised that stock, and provisions had been made by reserving 200 shares.

Q. Were they the persons entitled to donated stock?

A. Yes, sir.

Q. And you have already testified as to how that donated stock was provided to be paid for?

A. Yes, sir; if that was not paid for in that way, then there was only one other way, and that was to divide it among all the proprietors.

Q. Do you know who had the donated stock, other than the 200 shares?

A. The other 200 shares, I think, Capt. Frue gave out of his own stock, to fulfill some of those promises, but Mr. Loring had the other himself.

Q. I come now to the questions upon the notes; what time were you in Boston in 1868?

A. I was in Boston early in February. The last of January or the first of February.

Q. Do you remember at that time of signing any notes there?

A. Yes, sir; I signed a large number of notes.

Q. Do you remember where it was?

A. It was in Mr. Loring's office in Kilby street.

Q. Is your recollection distinct about it?

A. My recollection is distinct about it; I signed at one time 15 or 20 notes.

Q. How were those notes when you signed them?

493 A. Those notes were blank notes, undated. I don't remember but there might have been 5,000 put into the notes, but I am not certain that there were.

Q. You mean the amount filled in?

A. Yes, sir. Just the number of dollars, there might have been, but nothing further, they were not further filled out.

Q. And what upon those notes did you write?

A. I simply signed them.

Q. You are uncertain whether the amount was filled in or not.

Objected to as suggestive and leading.

A. I am uncertain about that; in fact I don't remember, but if the amount was put in the notes, there wasn't anything else.

Q. For what purpose were those notes given?

A. Those notes were given for Mr. Loring to use at his convenience, both as he wanted it himself and as they were reqeuired in my accounts.

Q. Mr. Loring testifies with reference to these notes, in answer to the question of how many notes were ever given at one time, "two only."

A. He is mistaken about that.

Q. Mr. Loring testifies with reference to the rate of interest on balances of your account with him or his accounts with you, that they were computed on one side at one rate and on the other side at a higher rate, and that was an express agreement with you?

A. There was no such agreement. I never noticed until we got into this case, that he made that difference. It is on the account I see, but it escaped my attention

Q. You say until you got into this case, what do you mean?

A. I mean this suit. In looking over these accounts I discovered that.

Q. Have you noticed whether this amended account which he now has filed has the interest reckoned at different rates?

A. Yes, sir.

Q. And what are the rates?

494 A. On one side is seven, the other side eight. At places they are the same on both sides.

Q. That is, seven per cent. when it is in your favor and eight per cent. when it is against you?

A. Yes, sir.

Q. In this amended account I observe that the cost of section 28 is put in a single item at $12,344.94, the last item on the debit side of the account, that is in Mr. Loring's amended account now filed;

have you looked to see whether that is made up of one-third of the account as stated in Exhibit 88?

A. I did not look particularly.

Printed copy of testimony here shown to witness.

A. Yes, sir; I take it for granted it was so.

Q. I see that in this account the interest is reckoned every six months and compounded?

A. Yes, sir.

Q. I think in this account, Exhibit 88, the first item is "To cash paid D. H. Ball for stamp, &c., $15," which item Mr. Burr testifies was for expenses paid to Mr. Dan. H. Ball and stamps for the deed from Loring to Frue on his quarter interest in the purchase; should that item be charged in the account against you?

A. No, that would not be a proper charge.

Q. In your statement of account which you first filed in this cause, you omitted from it the items relating to the Weed File stock; what have you to say with reference to that now?

A. That property was in Mr. Loring's hands, and no account had been given of it; I did not know what had become of it; I did not know whether the company was in existence or not; he had furnished me with no information with regard to it; now all I know in regard to it is in his testimony; I paid for it in these accounts; I don't know what the assessment is there for.

Q. That is the two assessments of $211.47?

A. No, sir, I don't know what it is for.

Q. But you are not disposed to make any further controversy about it?

495 A. No; it was in his hands, and no account had been given of it.

DETROIT, *July* 20th, 1880, 2 P. M.

*Cross-examination of Charles H. Palmer.*

At this hearing Mr. S. F. Seager appeared on behalf of complainant, and Mr. C. C. I. Walker for the defendant.

Mr. WALKER: I understand you to deny that you had any conversation with Mr. Loring when he was in Detroit, in October, 1870, as to the sale of the stocks at auction in Boston. Do you so deny?

A. I don't recollect. What I thought I said was—Mr. Loring did not say to me that he had those stocks, or anything but what he had sold them. I think he did mention that he had sold them.

Q. Then you do not mean to say that no conversation was had upon that subject?

A. No, I do not mean to say that. I think it was mentioned. That is my impression. But what I meant to say was that he did not claim anything but what he had sold them.

Q. What conversation did take place upon that subject? Please state distinctly.

A. I don't recollect anything further in regard to it. I don't now recollect anything further.

Q. Further than what?

A. Further than that he mentioned he had sold them; I don't now remember anything further, or that there was any principal conversation in regard to it that I remember.

Q. What remarks did you make to him when he informed you that he had sold them?

A. I don't recollect what I said to him, for that is all that I do recollect about it.

Q. How long before that had you got notice that a sale was to be made?

A. I don't now recollect I received any notice, excepting what I think went to Houghton, and from Houghton to Silver Islet.

Q. Where did you first receive these notices?

496 A. I received them at Pontiac.

Q. How long before you met Mr. Loring in Detroit?

A. That I don't remember now. I don't recollect that. I don't know that I had received them at all.

Q. How long does it take a mail to come from Silver Islet to Detroit—did it then?

A. It would be about four—three or four weeks. Very likely I received them, but I don't now remember the precise dates. I think the letters will show exactly. What the letters themselves show, it is. It would take some three or four weeks to go around that way; it might take longer.

Q. Do you mean that it would take three or four weeks to come from Silver Islet, or from Boston to Silver Islet and back again.

A. From Boston to Houghton, then over to Silver Islet, and then from Silver Islet to Pontiac.

Q. You said in your testimony that Mr. Loring had threatened to confiscate your stock. When, where, and how did he make such a threat?

A. Only as is represented in his letters.

Q. What letters?

A. The letters that are in this case. I don't know of anything else.

Q. Do you refer to the letter where he extended the time a year for you to pay your indebtedness?

A. I refer to the letters written, in which he threatened to sell my stock before he did sell it.

Q. Do you refer to any specific letters?

A. No, I do not. At the same time I recollect that he wrote such letters.

Q. And you refer to no letters but such as are already in the case?

A. No, sir.

Q. Let me now call your attention to the two hundred shares of stock loaned; did not Mr. Loring send you the two hundred shares

of stock in the letter of July 22d, 1867, being Exhibit No. 16, page 35, of Mr. Loring's printed testimony (showing the testimony to the witness)?

497 A. I recollect the letter which you refer to.

Q. Yes, sir; a letter of July 22d, 1867. Did he not send you the stock in that letter?

A. He did; yes, sir.

Q. Did you return the stock to him?

A. I did not; I gave that stock to Captain Frue, not having any interest in it.

Q. But you received it upon the condition named in the letter?

A. I did not regard that he had any right to make that condition.

Q. I am not asking what you regarded. You received it upon the condition contained in that letter, didn't you?

A. I received it in the letter; yes, sir.

Q. Did you subsequently receive the letter of August 30th, 1867, being Exhibit No. 17, page 36, of Mr. Loring's testimony?

A. Yes, sir.

Q. Did you reply to either of those letters?

A. Yes, sir, I replied to those letters; that is, I think I did.

Q. Have you copies of those replies?

A. No, sir, I have not. They are in the testimony, are they not?

Q. If you did reply to them, are the letters in proof in this case?

A. I have that impression that the answer is there simply from memory.

Q. Look at the last clause of that letter of August 30th, and see if it does not refresh your recollection—that you hadn't notice previously of the reception of the stock?

Shows printed testimony to witness.

A. Yes, sir.

Q. Does it refresh your recollection, and what do you say?

A. I simply believe that I replied to those letters. Is there not a printed letter of mine there in the testimony?

Q. I don't know of any that responds to this. Do you

498 know that you replied, upon the subject of that stock, in any way?

A. My impression is that I did. I supposed that I did, and I thought there was a letter in there replying to it.

The witness here examines the record already printed. There is a letter of August 9th, 1869. "I received Ossipee stock, two hunshares, which was promised to Peters and King. I shall write you soon again." That is all that I notice. I think I did write him afterwards, and I think I conversed with him also.

Q. When did you converse with him?

A. I don't recollect now the time, but I think there was a con-

versation between him and me as well as letters on that subject.

Q. I now call your attention to the Adams stock. In your testimony in this case, on page 19 and 20, there is a letter from Mr. Loring to you, dated November 9th, 1867, in which he says: "I yesterday used one of your notes, filled up, for $5,000, and paid out for assessments, due on S. P. and Adams, and shall endeavor to get more money on them as soon as I can, to pay further assessments due on your and Frue's stock." And in another letter of December 9th he writes, on pages 21 and 22 of your testimony: "I enclose two notes for you to sign to pay your and Frue's assessments on Adams stock." Did you send him those notes as requested?

A. I presume I did.

Q. Did you make any objection to his using your notes to pay your and Frue's assessments on the Adams stock?

A. I didn't make any objection at that time.

Q. In the letter of December 24th, on pages 21 and 22 of your testimony, Mr. Loring writes you: "Those notes were received. One is used to pay your and Frue's assessments, and another soon will be used." Were those notes which he had requested you to send that he thus acknowledges?

A. I think he had other notes at the time; that is, more than the two notes; but still I don't know now without looking carefully at it.

499 Q. But you sent him those notes?

A. I have no doubt that I sent him the two notes.

Q. As requested?

A. Yes, sir; while I don't remember that, I have no doubt about it.

Q. And when he wrote you that he had used those two notes in payment of the assessments on your and Frue's stock, did you make any objections thereto?

A. I don't think I did. I don't think I noticed particularly that he was going to use it on Frue's stock at that time.

Q. Were not accounts repeatedly sent to you by Mr. Loring, in which he charged you with assessments paid on the whole 1,420 shares of Adams stock?

A. Yes, sir; there were accounts. But Mr. Loring always understood that 420 shares belonged to Frue. He always understood that.

Q. But you received these accounts?

A. I received these accounts.

Q. In which it was all charged to you?

A. Yes, sir.

Q. Did you not receive the account of which Exhibit 6, page 17, of Mr. Loring's testimony, is a copy. You remember that Exhibit 6. Did you not receive such an account?

A. I think that is a copy of it.

Q. When those accounts were received, did you object to that particular charge; and if so, when and where?

A. In the first place I requested Mr. Loring to put that stock in Frue's name.

Q. I want an answer to my question.

A. In the first place I objected to it, but he treated it in connection with my stock, and I called his attention particularly to it when I got the memorandum from him; that that stock belonged to Captain Frue; and he answered me that I had always said so, when I got the memorandum of that particular account.

Q. Do you refer to the memorandum which is Exhibit 103?

A. A memorandum containing all the assessments on 420 shares.

500 Q. The memorandum on page 213 of Mr. Loring's testimony?

A. I think so.

Q. Of whom did you procure that statement?

A. Of Mr. Loring.

Q. Did he prepare it personally?

A. I think he did. His clerk prepared it, but I obtained it from Mr. Loring.

Q. Who was present when you requested it besides Mr. Loring?

A. I don't remember that any one was present.

Q. For what purpose did you state to Mr. Loring you wanted that?

A. It was in reference to the fact that I have before stated, that that belonged to Captain Frue, and it did not belong to me to pay that, and it was for that purpose that he gave me that statement.

Q. When did you state to him that it did not belong to you to pay that assessment?

A. I only remember that time distinctly; at that time, you know. But I had spoken to him, that he ought to put that stock in Captain Frue's name, before. I had told him so, and I had told him so in the very beginning, and Mr. Loring had agreed to do that.

Q. When did you tell him to put that stock in Captain Frue's name?

A. At the commencement of the organization of the company.

Q. Where?

A. In Boston.

Q. Can you give the time?

A. It was in the very commencement of that company. Now, to explain it. Mr. Loring took 500 shares, I had 500 shares, and Frue had 420 shares. It was a gratuity to each one for our services in organizing that company. That 420 was that odd number. Mr. Loring took 500, I had 500 and Frue 420 as the proprietors
501 of that company. It was for our services, more than the others had, who, in other respects, shared alike with us.

Q. When was this matter arranged? Who was present at its arrangement?

A. Mr. Loring and myself.
Q. Any one else in Boston?
A. We did that.
Q. No one else was a party?
A. Captain Frue was on Lake Superior.
Q. You say when you got that statement from Mr. Loring, you told him that the assessments ought to have been charged to Frue?
A. I did; yes, sir.
Q. And not to you?
A. Yes, sir.
Q. What did he say to that?
A. He said I had always told him that that belonged to Captain Frue; he said I had always told him so.
Q. Was the clerk who made the exhibit then present?
A. I don't think he was. I had nothing to do with the clerk.
Q. But the clerk was in the office where this conversation took place, was he not?
A. Not necessarily. There were two parts to the office. I recollect his giving me that paper, and I recollect what he said.
Q. Loring gave it to you personally?
A. Personally gave it to me; yes, sir.
Q. You said, in relation to that stock, that it sold at one time for twelve or thirteen dollars per share. To what time do you refer?
A. I think it did in 1867. It is a mere impression of mine. I know it commanded a very fair price in 1867. I certainly bought South Pewabic at 22 myself.
Q. But afterwards it became very much depreciated, did it not?
A. It became depreciated. But both Adams and South Pewabic were always very valuable properties.
502 Q. I am not asking you about their value, but about the price of the stock. The stock was very much depreciated, was it not?
A. At the time it was depreciated; yes sir.
Q. What was that stock worth in the market in 1870—the Adams?
A. I have no knowledge of its value, or of any sales or transfers.
Q. I now call your attention to the notes. Did Mr. Loring ever on any occasion apply to you to make your notes for his accommodation?
A. I think Mr. Loring did previously to this. I don't know that he did specially at this time, but I had endorsed notes largely before.
Q. When and where had you endorsed notes for him?
A. In Boston.
Q. When?
A. I think I did in 1860; endorsed paper that was used here and in Cleveland.
Q. Did you, after 1866, ever endorse any notes for Mr. Loring.
A. I don't remember that I did; but I remember now that he

wanted these notes so that he might use them in the land transactions. I remember now; at that time.

Q. When was it that he wanted your notes that he might use them in the land transactions? Fix the time.

A. 1867 and 1868.

Q. Fix the time definitely when he so stated.

A. I don't remember the exact time, but it was in the years 1867 and 1868 that he asked me.

Q. Did he ask you more than once?

A. I don't now remember of more than once, but he asked me for notes more than once.

Q. What I am asking about now is the other matter. Did he ask you more than once?

A. I only remember now of his saying, as an excuse for his having those notes, so many of them, that he would want to use them in those land transactions.

503 Q. You said that you once endorsed notes. Did you ever sign any notes as maker for his accommodation?

A. I think I have, but I don't remember now. You see our business together has been very large; it has been millions; but I don't remember now, excepting in 1860, when I did endorse paper very largely.

Q. I am not asking about your signing notes, but about your making notes, as maker. That is a different thing—you became the principal then?

A. I don't remember anything further than I have stated. That he wanted those notes to use in the land account, as he might require.

Q. Were not accounts frequently rendered to you in which you were charged with these notes, or some of them, as having been paid by him.

A. Yes, sir, there were.

Q. Did you ever object to those charges?

A. Well, I objected to several things in those accounts.

Q. Please confine yourself to my question?

A. O, I don't remember objecting to the use of the notes when they were properly used.

Q. Were you not generally indebted to Mr. Loring at this time?

A. I don't think I was, sir; that is my impression. I was somewhat, but I don't think I was "generally" indebted to him.

Q. Please look at the letter I now show you, dated Nov. 10th, 1865, and see whether it is in your handwriting (showing a paper to the witness)?

A. Yes, sir.

Q. State whether you sent the note to Mr. Loring mentioned in the first paragraph of the letter.

A. This is my handwriting. I presume I did.

Q. Look at the letter I now show you, dated December 11th, 1867, and say whether it is in your handwriting?

Q. Did you send the two notes mentioned in the first paragraph of that letter?

504 A. Of December 11th?

Q. December 11th, 1867.

A. Yes, sir; no doubt of it.

The letters referred to and shown to the witness are marked Exhibits 118 and 119, and offered in evidence, of which the following are copies:

EXHIBIT 118.

PONTIAC, *Nov.* 10, 1865.

E. T. LORING, Esq.

DEAR SIR: I send you my note stamped; the date you will put on when you get the money.

Campbell only went to Buffalo, and I saw him to-day. He was sick abed, but had just received a letter from his brother to sign the deed which he has made out by you. He said he should be out the next day and would attend to it. He looks poorly, indeed, and for that reason I did not press him; but I have no doubt that he would do it cheerfully.

Truly, CHARLES H. PALMER.

If note is not right send it back, and I will give new one.

EXHIBIT 119.

PONTIAC, *December* 11, 1867.

E. T. LORING, Esq.

DEAR SIR: I inclose the two notes. I should repeat my dispatch from Frue to you, if I did not believe you would have one direct from Frue.

The contract with Edwards is made in my name only, and will not be completed under five months. I acted on the idea that land was cheap, and in five months we could not get it at all. We could sell half of this land for $10,000, and I am certain we ought to have it.

The S. P. is to be a great mine. The mill ought to earn now at least a thousand dollars per day.

Yours truly, CHAS. H. PALMER.

505 Q. You say you did not object to the charges for the notes when they had been properly used; did you ever object to any charges for notes, except at the time the accounts were received?

A. No, sir; I objected to the use of some of those notes, as they appeared in the account, because there were two notes that appeared there that ought not to have been there, and at the time those notes were used I had not a very correct idea of the accounts; I did not not have a proper knowledge of those accounts at the time they were used.

Q. Then are not those two notes to which you refer the only ones to the use of which and the charge of which you objected?

A. So far as I recollect.

Q. You say in your testimony that at one time you signed fifteen or twenty notes; will you please fix the time when you signed that batch of notes.

A. I think that was in the winter of 1868.

Q. What time in the winter?

A. My impression is it was in February.

Q. Who was present at the time when you signed that batch of notes?

A. I don't recollect of any one's being present; signed in the office.

Q. Mr. Burr present?

A. Very likely; I don't recollect.

Q. Were the notes left with Mr. Burr, as clerk, for Mr. Loring?

A. Mr. Loring took those notes.

Q. Was each one on a separate piece of paper, or on a blank sheet?

A. I don't recollect whether they were or not.

Q. Hav'n't you spoken of them as blocks of notes, as if they were signed in blocks?

A. I signed some fifteen or twenty at one time in the office; that is, something like that.

Q. And you think that was in February, 1868?

A. I think it was; that is my impression.

506 Q. Who requested you to sign so many notes?

A. Mr. Loring; I stopped before I got through with those notes; he requested me to sign more.

Q. And you signed all that he requested, did you?

A. I did; yes, sir.

Q. And you think that the amount was named in the notes, I understand you?

A. I am not positive, but the amount of $5,000 might have been in the notes. They were blank notes in other respects.

Q. That is, as to the payee were they blank, or were they all payable to Mr. Loring?

A. No, they were not; they were blank, excepting there might have been the amounts.

Q. I now come to Torch Lake, and I call your attention to it. Who made the purchase of this Torch Lake stock and property?

A. Mr. Sibley made that.

Q. Did you not make it yourself?

A. I only made it as Mr. Loring and the others made it.

Q. What is the answer?

A. I only made it as one of the party, Mr. Sibley did that work.

Q. You had nothing to do with it yourself?

A. Further than advising it as the others did. I was only one of the party.

Q. You had nothing more, then, to do with the purchase of the stock and property than Mr. Loring—and, who were the other parties interested?

A. Captain Frue was recommended——

Q. Well, wait a moment—I mean in Boston?

A. And Bigelow, and some others, and then there was a New York party.

Q. You had nothing more to do with it than Bigelow?

A. Yes, sir; perhaps more than Bigelow.

Q. You were simply an adviser in the matter, otherwise you had nothing to do with it?

A. My relation was the same as the others.

507 Q. You had no more active part in it than the others?

A. I did more work, but the purchase was actually made by Mr. Sibley. He saw all the parties; he received the money, received the stock. I was not known in New York in the matter at all.

Q. What was the gross amount paid?

A. For Torch Lake and the South Half?

Q. Yes, sir.

A. It was, I think, $23,700.

Q. Did Mr. Loring authorize these purchases?

A. He did; yes, sir.

Q. Did you at any time receive any directions not to continue the purchase, from him?

A. I received an intimation that it was not best to purchase any more, and I did not purchase any more, that is, I did not authorize any more, and there was no more purchased. There was no stock purchased after Mr. Loring advised not. In fact, while I thought of getting some, I did not.

Q. Look at that letter and see whether it was a letter that you wrote to Mr. Loring?

(Handing a paper to the witness.)

A. Yes, sir.

Q. You wrote that letter to Mr. Loring?

A. Yes, sir.

Letter shown witness marked Exhibit 120, and offered in evidence, the following being a copy:

NEW YORK, *March* 22, 1867.

E. T. LORING, Esq.

DEAR SIR: I send check for $4,951.80, being the amount due on Hall's, Anthony, and Bowen's accounts.

I could not get these funds in better shape and get them off today.

The check of $2,500, of Sibley, was due Hall, and this goes in the payment of his bill. There was a large mistake in the charge of Ossipee stock to Mr. Hall. It should have been $1,388.32, or about

this, as I did not make the interest exactly. I have a tele-
508 gram from you not to buy more land till all of the purchase to Bigelow is paid up. I do not understand this. I did not expect to buy more land, excepting about 4,000 shares of T. Lake; but I do not mean to buy those quite yet.

I can do no more now in getting money here. I shall see how much more I can do to-morrow. I do not know, on reflection, as I could do better in sending this money in this shape, as the checks are sure to be paid on presentation.

Truly yours, CHARLES H. PALMER.

Q. How was this stock and property paid for?

A. Torch Lake, you mean?

Q. Yes; confining it now to that; Torch Lake and Penn—I mean all of that that went together.

A. It was paid for in using drafts on Grand Portage by Frue, $4,450, and the balance was paid for by drafts on Mr. Loring.

Q. Who drew those drafts?

A. I drew them in favor of Sibley.

Q. From what funds were they paid?

A. They were paid by funds furnished by the different individuals through Mr. Loring.

Q. Did not Mr. Frue order the purchase of this property on his own account?

A. In the first place he wanted $25,000 invested for himself in this property; that is the first. That was by letter of December 31st, 1866, I think. About the time of the receipt of that lettter he telegraphed, limiting the purchase on his account to $12,000——

Q. Wait a moment. Well, go on and finish your answer.

A. But on consultation with Mr. Loring and Mr. Bigelow we did not think best to make a purchase specifically for any one individual, and we so decided, and so informed Captain Frue, and therefore we made this purchase in behalf of the parties who took the stock finally.

509 Q. When and where did you have the consultation with Mr. Loring and Mr. Bigelow upon that subject?

A. That was at the time of those letters, before the purchase was made

Q. On the reception of the letter of December 31st?

A. Yes, sir; during the time of those letters. There was a telegram afterwards. I informed Captain Frue at the time of what decision——

Q. Wait a moment. Please answer my question. I am only asking about the time of this interview in Boston. Confine yourself to my question. When and where was this interview with Mr. Loring and Mr. Bigelow when this conclusion was arrived at?

A. I don't recollect any particular place; I don't remember.

Q. Did you meet Mr. Loring and Mr. Bigelow together and consult and determine upon that question?

A. I don't recollect that I did. I merely recollect there was such an understanding between those parties.

Q. Did you consult with Mr. Bigelow upon that subject at that time?

A. I did; yes, sir.

Q. Where?

A. In Boston.

Q. Was Mr. Loring present?

A. I don't remember that they were together; they might have been, but I don't recollect.

Q. Did you consult Mr. Loring upon that question?

A. I did.

Q. How soon after the reception of the letter of December 31st, did you receive a telegram from Frue limiting the amount to be invested?

A. It was very soon after. The date of the telegram was the 14th of January.

Q. You have testified several times before in relation to this Torch Lake purchase, have you not?

A. Yes, sir; I have.

510 Q. You testified in the suit of Frue against Loring in 1874?

A. Yes, sir.

Q. In the suit of 1877, and in this case?

A. Yes, sir.

Q. Have you ever testified before to receiving such a telegram as you now mention from Frue?

A. I don't recollect that I have—at the same time—at that time——

Q. That is an answer to my question—that is an answer to the question?

A. Yes, sir.

Q. Were you not called upon to give all the statements in relation to the circumstances of the purchase?

A. That fact and the telegram was known to the counsel at the time.

Q. That is no answer to the question, Mr. Palmer. If you will answer my question I will be obliged to you.

A. I had designed to give all the facts that were material.

Q. Were you not called upon to give all the statements in relation to the circumstances of the purchase?

A. Yes, sir.

Q. How came you to omit so important a matter as this qualification of the directions given by Mr. Frue?

A. That was because I was not asked the question, and it did not occur to me when I was talking about it.

Q. Did you make that purchase in accordance with the directions with Mr. Frue?

A. No; I don't think I did, that is.

Q. Did you then inform me, Mr. Frue, that you refused to make the purchase in accordance with those directions?

A. I did; yes, sir.

Q. How?

A. By letter.

Q. Do you know what has become of that letter?

A. I do not.

511 Q. Have you seen it since?

A. I have not.

Q. Have you any copy of it?

A. I have not.

Q. Did you not, in your former testimony, in the Frue case, testify that "the Torch Lake purchase was paid for by drafts that had been sent from Lake Superior by Frue, and that Loring sent it to you in New York"?

A. If I did so testify I was mistaken.

Q. Do you remember whether you did or not?

A. No, I do not. I would (having now examined the facts and papers), I would be correct now, when I might not have remembered it correctly then.

Q. Then you did not act upon Mr. Frue's authority at all in making that purchase?

A. I did not; this is what was done; upon his recommendation it was purchased in the interest of all the parties who had it; at his recommendation.

Q. What do you mean by his recommendation; his letter of December 31st?

A. His recommending its being good property to purchase.

Q. Do you mean his letter of December 31st?

A. Not particularly; his other letters. There were several other letters in which he spoke of the value of the property.

Q. You say you informed Frue that the purchase would not be made as he requested. Did you inform him in fact, how the purchase was made?

A. I did.

Q. Did you have any correspondence with him upon the subject?

A. I did; yes, sir; he would have his share of the purchase.

Q. Did you receive any letters from him upon that subject?

A. I think I did.

Q. Have you got them?

A. I have not got them.

512 Q. Do you know what ever became of your letters to him upon the subject.

A. No, I do not; very likely they may be found.

Q. Who determined how much stock Mr. Frue was to have in this purchase?

A. Well, Mr. Loring.

Q. When and where was that determined?

A. That I think was in his office. He made out bills I think according to the divisions that he made.

Q. What was the amount that he determined Mr. Frue should have?

A. 2,600 of Torch Lake and 3,000 of South Half. There were two bills, one was of 3,500 and the other was 3,000, a different lot. There were bills of three thousand and thirty-five hundred of South Half.

Q. Do you know of Frue's ever having or claiming any stock under this purchase?

A. I know Captain Frue wanted it and expected to have it.

Q. The question is whether he ever claimed it or had it?

A. I don't know that personally, but I never knew anything to the contrary.

Q. When you received that letter of December 31, what did you do with it?

A. Gave it to Mr. Loring.

Q. Passed the letter over to him?

A. Yes, sir.

Q. Was not this the fact, that you handed him a portion of the letter that contained the list of drafts, and that his clerk took a copy of that list of drafts from the portion that you handed him, and that the whole letter was not handed to him for perusal.

A. That could not be, because Mr. Loring had access to all my letters with Frue, and I made it a point to give him all the information which Captain Frue gave me. I designed to be very particular about that.

Q. Did you not testify, in 1874, in the Frue-Loring case, substantially as follows:

513 Q. "Take the letter of December 31st, 1866, which was sent by William B. Frue, himself, which contains a list of drafts amounting to $25,000, will you please look at that and state whether you ever gave him the original of that letter, or ever gave him a copy of that letter.

"A. My impression is that I did, the sheet that contained the sums remitted; that is, my intention was to give him every one, and I believe I did.

"Q. Why did you fail to give him the other sheets containing the other pieces of the letter?

"A. I know of no reason why I failed to do so, unless it was that the amount I gave him was what I gave it to him for; I know of no other reason. Mr. Loring copied merely the sums.

Q. Did you so testify?

A. Very likely I did.

Q. And is that a true statement?

A. I don't think it is a full statement, because at the time, not having considered these matters, I did not think of it. I have no doubt that I gave Mr. Loring all that letter, because I recollect distinctly conversing with him upon the subject of that letter.

Q. Was not your memory fresher upon that subject in 1874 than it is now?

A. Mr. Walker, it is not; that is, there is so much of this that you have to get from documents, that it brings back things entirely familiar to you. No one can be familiar entirely, with such a matter as this, without investigation.

Q. Did you not testify, at the same trial, in 1874, as follows:

"Q. You say that this $25,000 was forwarded to you by Mr. Loring from Boston to New York; in what form was it forwarded in the original drafts?

"A. In the original drafts.

"Q. Sent by Frue?

"A. Yes, sir.

"Q. These drafts were all payable to your order?

"A. Yes, sir.

"Q. And forwarded unendorsed?

"A. Of course, if I received them in New York, which I think I did.

"Q. Are you able to say that Loring opened that letter at all; that you did not receive it in the original letter in which Frue sent them?

514 "A. I would not say that; but I would say this: I know that he did open some of them; I know that, because I recollect it. I would not say that he did not open all of them, for that might have come in the original envelope."

Q. Did you so testify?

A. Yes, sir. What purchase has that $25,000 reference to?

Mr WALKER. This same purchase.

The WITNESS. Are you certain of that?

Mr. WALKER. Yes, sir.

The WITNESS. You see there is a confusion there, because there was $25,000 that was sent in the Douglass purchase, in the original draft.

Q. Did you refer there to the Douglass purchase?

A. That only applies to that, because it does not apply to the other; because we know exactly now how the other was paid.

Q. Then you say that testimony does not relate to Torch Lake?

A. It does not apply.

Q. Pid you intend to have it apply to the Douglass purchase at that time?

A. I would have to read that over. But if I did so state, the application is to the Douglass purchase and not to Torch Lake, because it don't apply to it, you know.

Q. Didn't you say, in relation to this Torch Lake matter in 1874, "I was made the acting man on behalf of the parties who had been concerned"?

A. I did say so, and I had entirely forgotten that I did not appear in New York; that Sibley appeared in this business; I had over-

looked it entirely. Putting myself as principal when I was merely a secondary man.

Q. Now, sir, you have said that your testimony there related to the Douglass purchase. Did you not, in 1877, testify, in relation to these drafts that were sent in the letter of December 31st, that "Loring gave these very drafts back to you for the very purpose for which they were sent"?

A. I don't recollect of saying so.

515 Q. I will read the whole testimony upon that subject, and it bears directly upon the letter of December 31st:

"Q. Did you deliver this letter to him?

"A. I did, sir.

"Q. In what form were those remittances?

"A. They were drafts upon different mining companies for the most part, sometimes on bankers; but for the most part on mining companies.

"Q. These drafts of different amounts?

"A. Of different amounts.

"Q. In what form did you hand over the funds to Loring?

"A. The drafts were handed to Loring.

"Q. Exactly as you received them?

"A. Exactly as I received them.

"Q. You did not convert any of them?

"A. Except that I gave them back to him, to be used for the purpose for which they were sent."

Q. Is that your testimony?

A. Yes, sir.

Q. Does that refer to these drafts of December 31st?

A. That is a general remark. For instance, there was $4,450 he gave me, which was used in the purchase of Torch Lake; and then there was some $18,000 or $20,000 given me which was used in the purchase of the Douglas property; and those were all that I ever used in any way.

Q. Do you not know that Mr. Frue sought by the aid of your testimony, in his suit with Mr. Loring, to recover for these very drafts that were forwarded to make this Torch Lake purchase?

A. No; I don't think I know that.

Q. You say that Mr. Loring saw your letter to Sibley in connection with this purchase?

A. Yes, sir, I said so. I know it was written in his office.

Q. Will you state what passed between him and you in relation to that letter particularly?

A. I merely know that he approved of it.

Q. Did you read it to him?

A. I did.

Q. Who was present?

A. I don't remember of any one being present.

516 Q. Mr. Burr present?

A. I don't remember; I don't remember of any one being present.

Q. Any talk about it?

A. I read it to him for his approval. Now, I would not do that kind of business and keep Mr. Loring ignorant of what I was doing.

Q. I am not asking you about what you would do. I am only asking for the facts. You read the letter to him and he approved of it?

A. I did.

Q. You testified Mr. Loring corresponded with Sibley in reference to this purchase?

A. I did.

Q. What do you know about that?

A. I know that he received letters from Loring in which it was referred to. I recollect that.

Q. What else?

A. Mr. Sibley had told me himself that he corresponded. I was myself in New York.

Q. You say that Sibley told you himself that he had corresponded with Loring about Torch Lake?

A. Yes, sir.

Q. What letters of Loring's do you refer to upon that subject?

A. I simply speak from memory. For instance, I know that I received letters from Mr. Loring in relation to the stock which was purchased by Sibley and in Sibley's hands.

Q. I am not asking about your receiving letters. What I am asking is, what do you know personally about Mr. Loring's correspondence with Sibley?

A. I know that Sibley said he had letters from him.

Q. That is all you know about that?

A. Yes, sir, I was in Sibley's office, and I recollect of his having received letters from Loring; his speaking of his having received letters from Loring.

517 Q. Then you only know that by hearsay from Sibley?

A. Yes, sir; I don't remember myself of any letter that I saw; only I remember of my understanding that.

Q. You know of Mr. Loring having any correspondence with Frue whatever upon this subject of Torch Lake?

A. No; I don't know myself.

Q. Did you not, in 1874, in the Frue trial, testify in answer to this question: "In the winter of 1866–'67, did you not, in New York, make a purchase of land, and purchase Torch Lake stock also, in which land and in which stock Frue had a share? A. I did; in which all the parties having been spoken of here had an interest." Did you so testify?

A. I did.

Q. You now say you did not make the purchase?

A. I don't mean to be understood that I had nothing to do with it.

Q. Did you not say at the same time: "The land connected with

it was the adjoining land; the land was purchased by me and Sibley?"

A. What land is that?

Q. The land connected with Torch Lake and Penn.

A. I might have said so.

Q. Is that true?

A. It is true just the same as it would be with the others who were in this pool.

Q. Then you mean, simply, that you were indirectly interested in the purchase; is that all you mean?

A. Yes, sir.

Q. Is that all you attempted to swear to?

A. Yes, sir; I was one among others.

Q. But had nothing to do individually with the purchase?

A. I think that is understood. The work was done by Sibley. He saw the parties; I did not.

Q. I now call your attention to some little items expended. You say that those expenditures—your expenses to Pittsburg, tel-
518 egrams, things of that sort—were provided for by agreement. Will you state precisely how those expenses were provided for—by what agreement and between whom?

A. Mr. Walker; I did not go to Pittsburgh; I had no expenses to Pittsburgh; I paid my own telegrams; paid all my own expenses.

Q. Do you say that Mr. Loring did not advance you fifty dollars?

A. No, sir; he did not advance me a cent.

Mr. SEAGER. Mr. Loring is the man who went to Pittsburgh?

The WITNESS. Mr. Loring was the man who went to Pittsburgh. I paid my own expenses; I paid my own hotel and traveling expenses; paid for my telegrams, and my telegrams were ten times what his were.

Q. Did Mr. Loring go to Pittsburgh at your request?

A. No, sir.

Q. You had nothing to do with it?

A. I was simply one. Mr. Patrick, in Pittsburgh, owned some land adjoining ours, and Mr. Brigham owned some lands, and it was especially at the solicitation of Mr. Brigham that Mr. Loring went. What he went on was simply in the general line of these speculations.

Q. You testify in your testimony that there was a special agreement by which your expenses were provided for?

A. I meant this, that the $5,000 extra raised by assessment on Ossipee, one-half of that, $2,500, should be appropriated for paying these expenses and for paying for four hundred shares of donated stock.

Q. You have not explained yet what you mean by this testimony: "These expenses were provided for by an agreement among the

parties to these companies." What I ask is, when and where that agreement was made and what was it?

A. That was decided upon immediately after the purchase of the Douglass property. The assessment of one dollar and a half, which would make $30,000, was put at that amount so as to make a surplus of $5,000. I recommended that myself; I planned it; I stated it to Mr. Loring and the others, and they assented to it.

519 Q. What other parties?

A. Mr. Bigelow.

Q. Any others?

A. Those were the principal parties; Mr. Brigham also. It was the only sensible thing to do; it was the only thing that could eventually be done.

Q. Mr. Bigelow and Mr. Brigham assented?

A. Yes, sir. There was no dissent.

Q. No, that is not the question. You say here there was an agreement. I want to find out what it was. Brigham, Loring, Bigelow, and yourself were the parties to that agreement?

A. We were all consulted together about it.

Q. These incidental expenses were to be covered?

A. They were to be covered by $2,500 by that assessment.

Q. Accounts were rendered to you from time to time with these expenses in, were they not?

A. They were.

Q. Did you object to the charge for these expenses?

A. I saw that account as I would see others. I did not suppose I had anything more to do with it than any other one. I never considered that my account.

Q. You made no especial objection to it when it was rendered to you?

A. I had no occasion to. That was only a memorandum account. It was not supposed to be my account.

520 In the Circuit Court of the United States for the Eastern District of Michigan. In Equity.

CHARLES H. PALMER, Complainant,

*vs.*

ELISHA T. LORING and CHARLES A. WELCH, Defendants.

Deposition of Joseph W. Clark, taken at Boston, Mass., June 5th, 1880, on the part of complainant.

S. F. Seager, Esq., representing the complainant, and the defendant, E. T. Loring, appearing in person.

Q. You are the gentleman, Mr. Clark, to whom Mr. Loring sold a block of Ossipee stock, are you not?

A. Yes, sir.

Q. How much of that stock did you ultimately obtain in the aggregate; you got the whole of it, did you not?

A. No, sir; I never bought it.

Q. I don't mean of Mr. Loring?

A. No; I bought a majority of the stock, and the balance came in and was paid its dividends. I did not get it.

Q. About how much did you purchase altogether?

A. A majority of the stock—ten or twelve thousand shares.

Q. The entire property of the Ossipee was transferred to the Osceola subsequently, was it not?

A. I don't think the Osceola got the whole of that property.

Q. Well, it got the greater portion of it, did it not?

521 A. No; I don't think it did. I think they got about half of it. They took the valuable part of the vein, as I understand it; but I don't think they got more than about half of the territory. If you had the plan here it would show in a minute how it was divided.

Q. That is immaterial. They took what was supposed to be the valuable part of the vein?

A. Yes, sir; I think they got about half of it in territory.

Q. What dividend was paid the holders of the Ossipee stock on the transfer being made?

A. Six dollars and a half.

Q. Cash?

A. Cash.

Q. Have you been connected with the Osceola, as a corporation, for the last few years?

A. Yes, sir.

Q. In what position?

A. I have been president since its organization.

Q. Are you familiar with the market price of that stock during the last few years?

A. I have been, as it came along; I can't go back and tell.

Q. State, if you please, the highest market quotations or sales of which you are aware made during the last year?

A. It sold at 47, and I think, perhaps, a little higher, but I don't know of any sale higher that 47.

Q. What has been the cost of that stock to the original corporators, including all assessments, and excluding dividends?

A. It has been $22 a share in money.

Q. What dividends have been declared?

A. There have been four dividends declared, one of one dollar, and three of one dollar and a half.

Q. Have the dividends been about sufficient to equalize the interest account?

A. I should think they would about offset it.

Q. So, if I understand you, it leaves the net cost $22 a share?

A. Yes, sir; it wouldn't vary much from that. I have never gone into the details to figure the interest.

522 *Cross-examined by Mr. Loring.*

Q. What, in your judgment, was that Ossipee stock worth in the market when you bought it of me at $5 a share?

A. O, well, not half of that. There was no market value; it was purely nominal.

Q. I mean what was the market value of the stock which I sold you at the time?

A. Well, really, it was so nominal that it could hardly be said to have a market value.

Q. Well, give us your idea?

A. I doubt if it could have been sold for two dollars and a half a share, excepting with the control.

Q. What number of shares did you pay a dividend of six dollars [and] a half to?

A. The whole number—20,000—every one.

Q. You mean, informally, in the reorganization of the two companies?

A. No, sir; I mean actually; every certificate is in my drawer now. Every certificate has been paid six dollars and a half.

Q. Six dollars and a half to the original stockholders of the Ossipee?

A. No, not the original stockholders. Let me qualify that.

Q. To those original stockholders who did not avail themselves of the new organization?

A. There was no availing of the new organization.

Q. Certainly there was. You organized the Osceola from the Ossipee?

A. No we didn't, not as far as the individuals were concerned. The Ossipee property was sold, and there was no reorganization whatever. There was no right which any stockholder in the Ossipee had over any other stockholder.

Q. Let me ask it in another shape Was any portion of the gentlemen who subscribed for the stock of the Osceola stockholders in the Ossipee?

A. I think so; it was like buying land of anybody else.

523 Q. You have been asked the highest price of the Osceola stock; now, I wish you would give me the lowest price of the Osceola stock the last three years, since the organization?

A. Well, I can't swear to anything more than I have got here on my book. I bought some of the stock at $10 a share; a large amount of it was sold at that, and I could have bought a great deal at even a great deal less than that, but I think it sold for somewhere about $8 or $9 a share.

Q. Are you aware that, some time previous to the purchase of this Ossipee stock by you, it was sold at public auction, after thirty days' notice, for fifty cents a chare?

A. No, sir; I don't think I am.

Q. Will you look at that (presenting an auctioneer's memorandum of sale) and see if you recognize that? You bought of me in March, 1872, ten thousand two hundred shares.

A. Yes, at $5 a share.

Q. Were you aware at the time you bought that stock that the

same stock had been sold, eighteen months previous, for fifty cents a share?

A. I have no doubt I was aware of it. There is no doubt that it did sell for almost nothing, it was so purely nominal all the way along, like a great many others—nearly all of them.

Q. Mr. Clark, I would like to ask you what amount of debt you assumed of the Ossipee Company at the time you purchased this stock; did you not pay me ten thousand dollars, or thereabouts, or become responsible to me for $10,000, or thereabouts, of the debt of the Ossipee company?

A. Yes, I paid some $10,000 or $12,000 for the Ossipee company.

*Re-direct Examination.*

Q. Mr. Clark, was it not the fact that in the purchase from Mr. Loring you simply became responsible that the Ossipee
524 should pay the debt which it owed to the Kearsarge?

A. I gave my personal obligation that the debt should be paid to Mr. Loring.

Q. And it was subsequently paid, but it was paid by the Ossipee Company?

A. Yes, sir; from the property of the company.

Q. Paid by the Ossipee itself, and not by you individually?

A. Certainly.

Q. When did you become an officer of the Ossipee—about how long after the purchase you made from Mr. Loring?

A. My impressions were that I had been an officer a good while before—a director.

Q. When did you become the managing officer and receive possession of the books—about how long after the purchase?

A. I don't know that I have any means of telling that; Mr. Burr handed the books and papers over to me very soon after the purchase.

Q. Is this the Ledger of the Ossipee Company, Mr. Clark?

A. Yes, sir.

Q. Is this the Journal?

A. Yes, sir.

Q. Are these the books handed over to you by Mr. Burr?

A. Yes, sir; the treasurer.

(Signed) JOSEPH W. CLARK.

COMMONWEALTH OF MASSACHUSETTS,
*County of Suffolk, City of Boston,* } ss:

Subscribed and sworn to before me this seventh day of June, A. D. 1880.

Witness my hand and official seal.

(Signed) JAMES W. CHAPMAN,
*A Commissioner for the State of Michigan.*

525 In the Circuit Court of the United States for the Eastern District of Michigan.

CHARLES H. PALMER *vs.* ELISHA T. LORING *et al.*

Testimony taken before Herschel Whitaker, special commissioner and notary public, at his office in the city of Detroit, on November 30th, 1880, at 2 o'clock p. m.

*Charles H. Palmer recalled, and re-direct examination continued.*

Examined by Mr. POST:

Q. I call your attention to the statement in your letter marked Exhibit 87, page 96, of the Boston testimony, dated November 7th, 1870, to Mr. Loring. You state with reference to the notice of the auction sale of the stock, as follows: "I said I received an envelope containing a notice of sale of stock, remailed at Houghton September 26th, and received by me about the first of November." What have you to say about that being correct—as to being the first of November?

A. The first of November? I was writing in November, and I should have said the first of October.

Q. The conversation itself was in the early part of October?

A. About the 5th of October; yes, sir.

Q. Have you found an envelope and a copy of the notice of sale?

A. Yes, sir; I found the other notice.

526 Q. That notice was the letter that was enclosed in that envelope (handing an envelope to the witness)?

A. Yes, sir.

Q. Is that notice or letter the one referred to in Exhibit 87?

A. No, sir; this is not the one.

It is conceded that the notice is the same as Exhibit No. 83 (being a printed notice of sale of stocks by Henshaw & Bros., auctioneers), and the envelope is offered in evidence and marked Exhibit 121.

The envelope is directed to Mr. Charles H. Palmer, Houghton, Mich. The "Houghton, Mich.," is erased, and the letter is redirected to Silver Island, Canada. The envelope is post-marked "Boston, September 12th;" also, "Houghton, October 5th or 8th." It has on the upper left-hand corner the printed card of Lafayette Burr.

Q. Were the letter and the account I show you received about the date of the letter?

A. It was; yes, sir.

Q. It is in Mr. Loring's handwriting?

A. In Mr. Loring's handwriting; yes, sir.

Offered in evidence, and marked Exhibit 122, the following being a copy:

EXHIBIT 122.

OFFICE OF THE ADAMS MINING COMPANY,
31 KILBY STREET,
BOSTON, *October 13th*, 1870.

C. H. PALMER, Esq., *Houghton.*

DEAR SIR: I enclose herewith your account current, made up to 30th September, and copy of the account sales made by Henshaw Brothers, auctioneers, of the collaterals left in my hands as security for your indebtedness to me.

The payment of the balance due on this account, say $10,992.53, I beg you will give your immediate attention to, and oblige.

Yours, E. T. LORING.

527 C. H. PALMER, IN ACCOUNT WITH E. T. LORING.

| | | | |
|---|---|---|---|
| 1869. | | | |
| Dec. 31, | To am't, as per bill rendered | | $16,181 36 |
| 1870. | | | |
| Apr. 30, | To int. on $16,181.36, 4 mos., at 8 per ct. | | 431 52 |
| Aug. 31, | " 16,612.88, " 8 " | | 443 01 |
| Sept. 30, | " 17,055.89, 1 mo., at 8 " | | 113 71 |
| | | | $17,169 60 |
| | CR. | | |
| By net result of sale of coll. sec. | | | 6,177 07 |
| | | | $10,992 53 |

BOSTON, *Sept.* 30, 1870.

A letter is shown to the witness, bearing date January 17th, 1867, purporting to be written by Mr. Loring to William B. Frue, at Houghton, in which occurs the following passage, which is put in evidence, by consent, in place of the whole letter:

"Mr. Palmer informs me that the Lantern stock, as he terms it, is to be a direct gift to the parties. I allude to it *only* for the purpose of calling your attention to the assessments. I presume the parties receiving the stock will gladly pay these, as the funds go directly to the treasury to meet the expenses of developing the property, which we expect, of course, will add greatly to the value of their stock. If I am wrong in this, however, advise."

(A paper is here shown to the witness.)

Q. Did you receive that letter from Mr. Loring about the time of its date?

A. Yes, sir; I did.

The paper is dated October 20th, 1870.

Q. Is the letter in Mr. Loring's handwriting?

A. Yes, sir.

Paper is offered in evidence, and marked Exhibit 123.

Objected to as incompetent and irrelevant.

528 EXHIBIT 123.

ADAMS MINING COMPANY,
TREASURER'S OFFICE, No. 31 KILBY ST.,
BOSTON, *Oct. 20th*, 1870.

C. H. PALMER, Esq., *Pontiac.*

DEAR SIR: On hearing from you in Detroit that the 200 shares Ossipee stock loaned you had been used for the settlement with the parties to whom Capt. Frue donated certain stock for aid in his efforts to discover Lantern, and to quiet them in regard to what was done. The amount promised by Capt. Frue was 400 shares. You cannot have forgotten that it was understood from the beginning that, inasmuch as Frue had promised the stock, assessments fully paid, that it was expected and anticipated that the company would, by its directors, vote to reimburse you the cost of this stock, the cost of land and assessments having, by the arrangement between you and the subscribers, been charged in your account.

Now, the ground I take is, you having effected a settlement with these claimants for 200 shares, you are, in equity and justice, entitled to the cost of the stock to the extent of the 200 shares used. Hence, on my return, I made out against the company, in your name, account for the amount due, with interest. In conversation with Mr. Bigelow, he says he has forgotten the circumstances, and wants a statement from you, setting forth the correctness of the account presented and herewith inclosed. This I want you to indorse as approved, because I know it is right. Then I wish you to write to the treasurer a letter explanatory of the origin of this demand. The ground I have taken is that, though the 400 shares was promised, you have effected a compromise settlement for 200 shares, and it is no use to ask for any more. The fact of my having loaned you the stock does not effect the merits of the question at all; therefore no need to say anything about it whatever. This bill, if approved, will reduce your indebtedness to me, on the first day of October, $1,280.67.

I admit that this alone is not valid ground for approval. In
529 connection with all the facts pertaining to it, I think you will not fail to sustain the views I have taken, when you bring to your recollection all the circumstances of the case. An early reply will oblige— Yours,

E. T. LORING.

OSSIPEE MINING CO., TO C. H. PALMER, DR.

| | | | |
|---|---|---|---|
| 1870. | | | |
| Oct. 1, | For 200 shares Ossipee stock donated to sundry parties at the Lake, for services rendered, at $483.50 per share | $1,032 | 67 |
| Oct. 1, | For int. on 400, cost of land at $2 | 94 | 00 |
| " | " " ass'ts at $3.50 per shr. $700,00 from Feb. 1, 1867, to date, at 6 per cent., three years, eight months | 154 | 00 |
| | | $1,280 | 67 |

Q. I call your attention to Exhibit 87, on page 97 of the Boston testimony again, being Mr. Palmer's letter to Mr. Loring, dated November 7th, 1870, in which it refers to Mr. Loring's letter of the 20th. I will ask you whether that refers to the letter last introduced in evidence?

A. Yes, sir.

Q. I call your attention to the fact that Exhibit 87 in the last clause, says: "I return the account with such remarks as you can show to Bigelow." I will ask you first whether that account there referred to, is the account enclosed in the letter of October 20th?

A. Yes, sir; it is.

Q. And whether, in this connection, with this letter Exhibit 87, there was an account as there stated and a letter to Bigelow, to be shown to him?

A. There was; yes, sir.

Q. Have you a copy of that letter?

A. I have a copy; yes, sir; there is a draft of the letter of the 7th, and also of the remarks to Bigelow.

Q. You mean the letter Exhibit 87?

A. Yes, sir.

530 Q. And also the letter to Bigelow which accompanied it?

A. Yes, sir.

Q. Whether this letter to Bigelow was enclosed with the other to Loring?

A. It was; yes, sir; that is one of the very few copies that I had.

Mr. Post. We offer this copy of the letter addressed to Bigelow.

Q. The copy of these two letters, as you produce them here now, are on the same sheet?

Q. Yes, sir.

Said copy introduced in evidence, and marked Exhibit 124.

EXHIBIT 124.

PONTIAC, *November* 7, 1870.

H. BIGELOW, ESQ.

DEAR SIR: The 200 shares of Ossipee stock given to Frue for John Peters and —— King, were agreed upon in the organization of the company. They were promised them by Capt. Frue to keep them quiet, as the men in the night had tracked Frue, and become acquainted with his operations. I sent for the stock and gave it to Frue for this purpose.

Truly yours,

CHAS. H. PALMER.

Q. This copy of the letter to Bigelow, which has just been introduced, is not a letter press cooy?

A. No, I never had letter press copies and only very few indeed of any that I retained.

Q. Now I call your attention to Exhibit 109, page 228 of the Bos-

ton testimony, being the letter from Mr. Loring to yourself, dated November 11th, 1870, and to the reference at the beginning of that letter, to a letter from you, of the 7th; I wlll ask you whether that letter there referred to is the letter of the 7th, enclosing the Bigelow letter?

A. Yes, sir; it is.

Q. Exhibit 109, as put in, purports to be a letter press copy;

531 I hand you the letter and ask you if that is the original of that letter.

A. Yes, sir; this is the original.

Q. Does this original contain any matter not in the letter press copy, in Exhibit 109?

A. Yes, sir; it contains a marginal remark.

Q. Is that in Mr. Loring's handwriting?

A. Yes, sir.

Mr. POST. The marginal remark is the conclusion of a sentence. The complete sentence would be as follows, including the marginal note: "This bill was made out precisely as *all* bills were against those to whom you allotted the stock, you having assumed the payment of the land and collected from each the amount or cost of stock which each received, *or rather I did as your attorney, acting under your instructions, as your account will show.*"

*Cross-examination.*

Q. When did you receive the letter of October 13th, with the account enclosed therein?

A. I received it about the time it was written.

Q. Did you reply to that letter.

A. I have not now any recollection; I presume I did, but I have no recollection upon it.

Q. And if you replied you don't know what you replied?

A. No; I don't.

532 In the Circuit Court of the United States for the Eastern District of Michigan. In Equity.

CHARLES H. PALMER *vs.* ELISHA T. LORING and CHARLES A. WELCH.

Elisha T. Loring, having been duly sworn by William F. Grubb, justice of the peace, deposed as follows, in answer to interrogatories propounded by Edward D. Sohier, Esq., counsel for defendants:

Q. Have you ever seen or been made acquainted with the contents of a deposition recently given by Mr. Palmer, the complainant in this case?

A. I have.

Q. Please state whether or not you ever at any time, directly or indirectly, authorized or directed Mr. Palmer to purchase certain property known as the Torch Lake and Penn property, which is referred to in the testimony in this case?

A. I never did. On the contrary I remonstrated against the purchase.

Q. Please state whether or not Mr. Bigelow, Mr. Palmer, and yourself ever consulted together and arranged as to the purchase of this propery, and directed Mr. Palmer to make it.

A. A meeting of that kind never took place to my knowledge. Mr. Palmer had some conversation with me, but what with the others I know not.

Q. I want to ask you, Mr. Loring, whether at the time
533 you paid the drafts which were drawn on you by Mr. Palmer for the purchase of this property any funds had been put into your hands by what are called the Boston parties?

A. No, sir.

Q. How were the drafts paid?

A. I paid Mr. Palmer's drafts, which he gave in New York for the purchase of that property, from funds which had been remitted by William B. Frue.

Q. Did you at the time of the purchase, or at any time afterwards, have any correspondence with Mr. Frue in regard to making the purchase of the Torch Lake and Penn?

A. No, sir; not in connection with the purchase or at the time of the purchase.

Q. Did Mr. Frue ever call on you, in writing or otherwise, for a statement of any interest or claim he had in said purchase?

A. No, sir; he did not call on me in writing at any time for such interest; but in 1869, while in Houghton, he made a demand on me for his interest in those stocks, in connection with all stocks then in my hands held as collateral security.

Q. Do you mean that he named these stocks, or called on you for all stocks?

A. He called on me for all stocks; made no special reference to these stocks.

Q. Did you have any knowledge in regard to the expectations or desires of Mr. Frue in regard to his expecting or having any interest in this purchase of the Torch Lake and Penn except what you received from Mr. Palmer?

A. No, nothing further than what was conveyed at the time of the purchase. I knew nothing further of Mr. Frue's expectations than what is conveyed in his letter of December 31, 1867.

Q. Letter to whom?

A. To C. H. Palmer.

Q. Please state whether anybody, and if anybody, who, fixed the amount of stock which Mr. Frue was to have in the Torch Lake and Penn?

534 A. Charles H. Palmer. The amount allotted to all the parties who had any interest was given to me in my office by Charles H. Palmer, and are now in the hands of Mr. Walker.

Q. Have you seen a certain letter connected with the complainant's

testimony in this case, which purports to have been written by him to Mr. Sibley, and to be dated March 14, 1867?

A. No, sir; I have no recollection of having seen it until I saw a copy in Mr. Palmer's testimony. I had no knowledge of the letter until that time.

Q. Did you ever have any correspondence with Mr. Sibley with regard to this purchase of the Torch Lake and Penn?

A. Never.

Q. Please state the marketable value of the Adams stock, which is referred to in the testimony in this case, at the time when the auction sale took place in 1870?

A. I have no knowledge of any reliable marketable value more than can be found in the report of that auction sale, it having been advertised two months previous to the sale. After the auction sale referred to, sometime subsequently, I should say, after the failure of the South Pewabic Company, there was no marketable value to my knowledge until the time of the sale of this property, which was bought and united with the South Pewabic. It then had a marketable value; in fact, it was sold for $1.66 a share.

Q. Whether or not Mr. Palmer at any time made any objection to you in regard to the charge which you made against him for the payment of the assessment on his and on Mr. Frue's Adams stock?

A. He made no objection to my accounts as rendered for a period of time, and the first objection was made on the Exhibit 103, which was produced at my examination last season, though his accounts had been rendered for some time previous and no objections had been made to them. Previous to that exhibit I have no
535 knowledge of Mr. Palmer making any objections to the assessments made against him on the Adams stock.

Q. In your last answer, when you used the word "exhibit," do you mean at the time when it was annexed to your deposition, or at any other time?

A. The time it was annexed to my testimony, when taken in your office.

Q. When you were examined on the former occasion, you stated that this exhibit was in the handwriting of one Atwood, once a clerk in your employ?

A. Yes, sir.

Q. State whether or not you knew of his making out the said exhibit or statement.

A. I have no recollection.

Q. Whether or not you handed the same to Mr. Palmer, or knew anything about it; and if so, state all the conversation that took place at the time.

A. I knew nothing about or in relation to it, but Mr. Palmer was frequently in my office, and sometimes did his own writing there, and had the clerks write for him there. I knew nothing of this transaction.

Q. Where is Mr. Atwood now?

A. In Chicago, the last information. He has been a resident of Chicago for some time past.

Q. You have read Mr. Palmer's testimony, taken in the case, in relation to an arrangement made about paying his incidental expenses out of the assessments on Ossipee stock?

A. I have read it carefully.

Q. What can you say in regard to any such arrangement being made?

A. There was no such arrangement made that I have any recollection of whatever—in fact, the assessments paid on that stock all went into the hands of the treasurer. The directors of the Ossipee Company voted $2,500 to Mr. Palmer in the expectation that that donation was to cover all his incidental expenses.

Q. Did you and Mr. Brigham and Mr. Bigelow and Mr. Palmer at any time have any conversation or meeting at which it
536 was agreed that the incidental expenses incurred by Mr. Palmer and others should be paid out of such Ossipee assessments?

A. No, sir.

Q. Please state whether Mr. Brigham is living now.

A. No, sir; his brother informed me that he died in 1868.

Q. Do you know where Mr. Bigelow is? If he is not here, do you know when he is expected to return?

A. He is now in Europe, and his son tells me that he expects his return in the spring.

Q. Have you read Mr. Palmer's testimony in relation to the fifty dollars charged in your account for expenses to Pittsburgh?

A. I have; very carefully.

Q. Please state whether or not it is true that you made any journey to Pittsburgh at that time in connection with said Palmer's business?

A. I did not—in fact, I have not been at Pittsburgh since 1863.

Q. To whom was said fifty dollars actually paid, and by what authority was it charged in Mr. Palmer's account?

A. It was paid to Mr. Palmer in person, who instructed me to charge it to his account.

Q. Did Mr. Palmer ever give you any instructions in regard to the money paid to Mr. Bigelow, and did he ever object to the charge of that money to him?

A. He authorized me to settle the balance due Mr. Bigelow and charge the same to his account. I never heard any objections until his testimony was taken.

Q. Did you, at the time of the commencement of the land account, or at any other time, agree with Mr. Palmer to furnish any money he needed in the transactions connected with said land account?

A. At the time, or about the time, the purchase was made of the Mineral Land Company there was an agreement with Mr. Palmer that I should make the advances named for his interest and

537 that of his associates in those companies, holding the same as collateral security.

Q. Did the Torch Lake and Penn have anything to do with what we call the Land Company purchase?

A. No, sir; in fact, to use Mr. Frue's own language, it was an outside concern, not contemplated when I made this agreement.

Q. State whether or not, in 1860 or 1861, Mr. Palmer directed you to sell Franklin stock, and whether or not you refused or neglected to sell it, so that it resulted in a loss to Palmer, and whether or not in consequence of this transaction you made any arrangement to advance him money for any purpose?

A. In 1861 or 1862, or maybe a little latter, I had had connection with Mr. Palmer for some time in the Franklin stock, and it was sold at that time on his instructions, for which I settled with him in full, whereby he realized some $35,000 profits, with little or no capital, and neither at that time, or any subsequent time, did Mr. Palmer claim any right to advances from me by reason of that sale.

Q. There is a letter of yours dated October, 20, 1870, appended to the last testimony of Mr. Palmer, relating to 200 shares of stock. I want you to state now what was your purpose in writing that letter, and in recommending him to present a claim for that to the company?

A. My purpose was, that with his endorsing a bill that I had remitted him against the company for this stock, the company were ready to pay it. I was aware that Mr. Palmer and Mr. Frue had made promises to their friends to give them so much of this stock, for which the company was to pay; but the company had no stock of their own, nor could not legally hold any; and when Mr. Palmer asked me for this stock, or a proportion of it—200 shares—I replied to him that I would loan him this stock, to enable his friend Frue to settle that stock at the Lake, relying on his honor to reimburse me by approving of my bill, so that it could be collected of the company, the company then being in funds to pay the bill, and would

538 have paid it had Mr. Palmer, as director, approved of it, which he refused to do, as my correspondence with him will show, though I advised him that the amount would be placed to his credit in my account.

Adjourned to Friday, December 10, at nine and a half o'clock.

BOSTON, *December 10th*, 1880.

*Cross-Examination by S. F. Seager, Esq., Counsel for Plaintiff.*

Q. Mr. Loring you stated yesterday that you were not consulted in reference to the purchase of the Torch Lake and Penn property. You knew from time to time, however, as those purchases were made, did you not, what the money that was being drawn from you was to be expended for?

A. Oh, certainly, I knew what it was to be expended for, but I think I did not state that I was not consulted in the first instance—

that is, let me qualify that. After the commencement of that purchase, I remonstrated with Mr. Palmer against his continuing any further to the extent that he was desirous of doing, because he was in New York and made some purchases before I was aware of it.

Q. You were advised of all the purchases that were made?

A. Certainly.

Q. And either at or about the time of the purchases, or very shortly thereafter, you assented to them, did you not, and took your proportion of interest in the purchases that had been made?

A. I assented to them at that time, and took my proportion. I think I should add that I did this at Mr. Palmer's urgent solicitation, against my own intentions and wishes. In other words, to prevent any dispute between us, because the funds remitted by Mr. Frue through Mr. Palmer were in my hands at that time, and to have rejected the payment of those drafts, would have led to a quarrel which would have been embarrassing.

Q. You have said that you received those funds from Mr. Frue through Mr. Palmer, and that this was an outside transaction.

539 You remember that in your testimony last summer, there was introduced your general account, spoken of as the "omnibus account." Those funds were all credited in that account, and paid out from that account, were they not, just as all the other moneys were?

A. I think they were. I should explain, however, that in the origin of the business I treated Palmer and Frue as one person, as co-partners; that is, in the origin of the land account. I acted on the supposition that Frue and Palmer were co-partners—that they had one interest.

Q. Do you not know, as a matter of fact, that Mr. Frue, in both of the trials had in Detroit, charges himself giving you credit, with the cost of his interest in Torch Lake and Penn?

A. No, sir; I don't. I want to make one remark, that I am not so positive as to the trial in 1874, although I have a copy of the account; but my impression is that he gives me no credit in either 1874 or 1877 for the cost of that stock.

Q. Is Mr. Sibley now living?

A. No, sir; at least I understand not. To the best of my recollection he died in Detroit some years ago.

Q. You state that Mr. Palmer made no objection to your paying the assessments on his and Mr. Frue's Adams stock?

A. I should qualify that. What you call Mr. Frue's stock I treated as belonging to Mr. Palmer. Mr. Palmer made no objections to my paying the assessments on 1,420 shares of stock standing in my name as trustee.

Q. Do you wish to be understood that you did not know that Mr. Frue had any interest in it at all?

A. Mr. Palmer told me that stock, a portion of it, belonged to Mr. Frue, but gave me no authority to transfer it to Mr. Frue's account, but admitted the correctness of my account where I charge

the assessment. Mr. Frue had other stock in the Adams besides this.

Q. The whole amount of this stock, 1,420 shares, stood not in Mr. Palmer's name, but in your name as trustee?

A. As trustee, and treated as Mr. Palmer's stock.

Q. You were informed by Mr. Palmer, were you not, that 420 shares of it did belong to Mr. Frue?

540 A. He might have made a remark something of that kind in my office; I cannot recollect distinctly; I have no particular recollection of it; but he took no measures to warrant my transferring it to Mr. Frue's account.

Q. You recollect that he told you a portion of the stock belonged to Captain Frue, do you not?

A. Yes, sir; I recollect his stating that Mr. Frue owned a portion of the stock, he knowing at the same time that it was treated as his and the assessments charged to him. I ought to add one word further. This fact that Mr. Frue owned a portion of that stock was not told me until the company were likely to prove worthless and in failing circumstances. That should be known. He put it off to so late a date that the company had little or no value when he made it known that a portion of it belonged to Mr. Frue. I recollect that distinctly.

Q. Mr. Loring, there was some testimony offered last summer, and I wish to ask you a question which was then omitted. Where are the South Pewabic books now?

A. They were transferred to the parties in New York who bought the property.

Q. To what party?

A. I am mistaken about that. They had such portion of the books as they chose, but the larger portion of them that remained after the fire in Boston were removed to East Boston, and there burned up in 1873. That is my recollection. Such portion of them as is not in possession of the Atlantic Company at present was burned up.

541 In the Circuit Court of the United States for the Eastern District of Michigan. In Equity.

CHARLES H. PALMER, Complainant,

*vs.*

ELISHA T. LORING *et al.*, Defendants.

Testimony taken before Herschel Whitaker, U. S. Commissioner, at his office in the city of Detroit, March 30th, 1881, at 4 o'clock p. m., at Detroit, Michigan.

Appearances—Mr. Hoyt Post and S. F. Seager for complainant; Mr. C. I. Walker for defendant.

It is mutually stipulated between the parties to the above entitled cause, that either party may have taken down by the commissioner

such of the testimony of William B. Frue and Charles H. Palmer as was given in the case of Frue *vs.* Loring, on the hearing occurring in the U. S. circuit court, 1874, and also on the trial of 1877, as may be desired; such testimony to be taken subject to all objections for relevancy and competency. This agreement is intended to supersede the stipulation about this testimony heretofore on the record.

Counsel for defendant Loring introduces in evidence the testimony of Wm. B. Frue, taken on the trial of 1874, as follows:

Q. But during the fall and winter of 1866 and 1867, were you interested with Palmer in other real estate speculations than those connected with this transaction?

A. In the winter and fall of 1866 and 1867 I sent money to Palmer, requesting him to make some purchase for me.

542 Q. Were you not interested in purchases made by him—negotiations made by him?

A. I was afterwards interested.

Q. I mean transactions carried on during the fall and winter of 1866 and 1867?

A. I became aware of the fact that Mr. Loring and Charles H. Palmer were going on to purchase land in Penn, or Torch Lake, and the south half of sections 35 and 36, in which it was represented by letter that I was to have an equal interest with Loring and Palmer in the amount of stock and land purchased in that particular locality.

Q. They did purchase lands there, did they not?

A. They purchased lands and they purchased stock.

Q. When did you become aware of this?

A. In the winter; probably in December or January—more likely the last of December.

Q. Land, you say, on section 24?

A. I recommended the entering into contract for lands on section 24.

Q. And some other lands?

A. I think I have already stated Penn or Torch Lake; they both mean the same.

Q. Were these lands purchased?

A. There were no lands that I am aware of, except the south half of sections 35 and 36, and I called on Mr. Loring to make out a statement of my interest in those lands, and if there was anything due I would pay it.

Q. Is this section 35 or 36 the same as Penn or Torch Lake?

A. It was originally organized under the name of Torch Lake, but Penn was a name given to designate it. That was organized on the north half of section 35 and 36, or rather Penn was, and I think Torch Lake embraced the whole of this section.

Q. Then those lands did not go into these adventures connected with these Kearsarge and Ossipee mining companies?

A. No, not to my understanding.

Q. Mr. Noble referred to a letter yesterday written by you, signed by you, under that date, December 31st, 1866, which purported to enclose $25,401.48, and commencing as follows:

'Enclosed please find drafts on account of land, to be applied on purchase of lands in sections 34 and 10.'

Now, sir, what were these moneys sent for, that $25,000?

A. Not all of the $25,000 sent. There is a letter which qualifies that.

Q. Where is the letter which qualifies it?

A. I think it can be found if the letters are produced.

Q. Will you find it?

543 A. I may be able to find it—that is, by an examination of the letters.

Q. When was the letter which qualifies it written?

A. About the same time—that is, I think there is a letter qualifying it, but I do not dispute the statement made there, but I merely put in that it was qualified. I have already stated that I did send money to Charles H. Palmer for the purpose of investing, outside of the arrangement that I had made with him when he left the Lake.

Q. Have you not charged some of the moneys on your bill of particulars in this case?

A. Mr. Palmer disobeyed my orders; did not buy the land or stock, as ordered, but passed the money into the hands of Loring, as on the former agreement or arrangement made with him.

Q. Don't you know, as a matter of fact, that the very land mentioned in this letter was purchased by Palmer, and he drew on Loring for the money to pay for it?

A. I don't know that he drew on Mr. Loring for the money.

Q. Do you know that it was purchased?

A. I believe it was purchased—that is, I have reasons for believing. I know from Mr. Loring's statement of accounts that have fallen into my possession.

Q. That he furnished the money?

A. That they furnished the money.

Q. That Loring furnished money to pay for this very land?

A. That the land was purchased. I don't know that Loring furnished the money.

Q. From what source do you suppose Palmer obtained the money to pay for that land, if he purchased it?

A. It appears about the time he commenced the purchase of that land, I should judge from the only evidence in my possession——

Q. You must not state what you should judge. Answer my question. From what source do you suppose Palmer obtained the money to pay for the land referred to in the letter, that he purchased?

A. I cannot tell what source.

Q. You did not expect him, as I understand you now, to pay that money over to Loring?

A. I did not; I expected him to apply it as I directed; but it was considered too good a thing to have that amount of interest in it for myself, and it was so arranged between the parties, Mr. Loring and Mr. Palmer, to go on and purchase, and give me a third interest of what was purchased in the enterprise; and about that time Loring and Palmer formed themselves into a company of two——

Q. Stop right there. I am not asking about that. I do understand you now to concede that the land referred to in this letter was bought and the money to pay for it was furnished in the same way, through Palmer?

544 A. Who furnished the money to pay for it, or who bought it, I am not prepared to say.

Q. Had you an arrangement or understanding with Palmer before this letter was written, as to the purchase of these lands mentioned in it?

A. No—that is, before sending the money I had requested, or, rather, urged, to go on in joint account—that is, Loring and several others to go in and purchase this land, and I think I requested a certain interest in it; but during the time there were no movements made as to satisfy me, and I was inclined to think that they would not purchase; hence I gave an express order to purchase.

Q. When?

A. The date of that letter.

Q. How did you give it?

A. By letter.

Q. Have you a copy of that letter in your letter book?

A. I must have a copy of it. I must have the original.

A. Letter written to Palmer?

A. Yes.

Q. If you have the original, I wish you would produce it.

(Witness produces a letter dated December 31.)

Q. This is the original of the letter which has been read from the press copy?

A. Yes, sir. There is another letter.

Q. You can drop that for the present, if you cannot find it.

A. I have not looked very carefully.

Q. When was the arrangement of the purchase of lands mentioned in this letter of Dec. 31 entered into?

A. I had recommended the purchase of them sometime before—that is, recommended the purchase of a certain interest in those lands.

Q. Before you sent this money to purchase that, you had some definite arrangement, had you not?

A. No definite arrangement. I sent the money because I had the belief that Mr. Palmer, Loring, and the others would not be willing to purchase, and I wished to invest so much in that property.

Q. Did you give him any instructions as to what you would want done with this money, except this contained in this letter?

A. I gave other instructions.

Q. When?

A. If I knew exactly the date, I could turn to it—look now and find it.

Q. Has that transaction, with reference to the purchase of lands, mentioned in this letter of Dec. 31, ever been settled between you, Palmer, and Loring?

A. It has not been settled.

545 Q. It remains still unsettled?

A. Yes, sir; I have dropped it, because I could not get any statement in accordance with the agreement when I got stock. There was stock in the concern purchased.

Q. Stock in the Torch Lake?

A. Yes, sir.

Q. Were the other transactions to be settled?

A. I suppose Mr. Loring would have been the proper person to have settled, or else I would not have made the demand on him. I requested Mr. Loring to render me a statement showing my interest and the cost of it. I have the letters. This money mentioned in this letter of Dec. 31, refers to that transaction, and not the Kearsarge and Ossipee. Mr. Palmer had a perfect right to pay moneys to Loring, but I do not believe I gave him authority to draw these moneys out.

Q. If you sent these moneys to Mr. Palmer to use for this transaction, and he put it into the hands of Loring, he had a right to draw it and use it in the transaction?

A. No.

Q. Why not?

A. Unless he bought it in differently from what he bought the others.

Q. No matter what he says. Suppose he took that letter with the money enclosed to Loring, and gave the money to Loring without any further instructions, would he not have a right to draw it out from Loring to apply it in this transaction?

A. I do not know. He might. When that letter came up once before, Loring claimed that he had no control over that money. I wanted to know of Palmer if he had used the money in the purchase of lands, and he said 'no, I passed the money over to Loring, and I went on and purchased for you equally with myself;' that is, we were to share pro rata on the stock purchased in the Torch Lake.

Q. Did he state where he got the money to make the purchase with; he did not claim to have the money from you, did he?

A. I do not think he did.

Q. From what other source could he get the money except from this source?

A. He might have got a certain portion of it from that source, but I have no means of knowing where he got the money that he purchased with.

Q. You know you sent him the identical money to make this purchase with?

A. I have so stated.

Q. Did you not, during that time, the winter of 1866 or 1867, have joint transactions with Palmer in which he had to use money?

A. I am not aware of any where he had to use moneys.

Q. You had other transactions with him had you not?

546 A. Not in the purchase of lands. That is the only land transaction I know of.

Q. When did I understand you that you first saw Exhibit L?

A. I paid that amount of money and settled the bill.

Q. When?

A. That was at the Portage office, July 16.

Q. What year?

A. It is down there in pencil, I suppose it is the same year that it was paid him, 1867.

Q. Can that be possible. Are there not entries on it in June, 1868?

A. You are correct, there are; but I was misled by those figures there, looking at the bottom of the bill.

Q. The date is July 16, without the year?

A. Yes, sir.

Q. Can you tell us whether it was 1868 or 1869?

A. I could not swear.

Q. At the time this account was settled, you saw Loring and went over the items?

A. Yes, sir.

Q. Was any attempt made at the time to settle his other account growing out of the Kearsarge and Ossipee?

A. I think there was some conversation about it.

Q. What?

A. It has slipped my mind. I remember something about it, but cannot state positively. It is unquestionably the time. That same thing has come up here three or four times, and I have answered every time.

Q. Did that transaction settle everything with Loring, with the exception of the money sent during the winter of '66 or '67?

A. Yes, sir.

Q. (By Mr. Lothrop), Settled all the matters except those connected with the Ossipee, Kearsarge and Iroquois?

A. Yes, sir; and this stock that I ought to have had in Torch Lake and Penn.

Q. (By Mr. Pond.) You ought to have had some of the stock in Torch Lake and Penn.

A. Yes, sir.

Q. Why ought you to have had it?

A. I was informed that I would share pro rata with Palmer and Loring.

Q. Had you furnished any money to pay for it?

A. I had sent down money that had passed into the hands of Mr. Loring.

Q. For that purpose?

547 A. I do not know for that purpose. I would not say for that purpose.

Q. You had sent no money for that purpose except the $25,000 mentioned in this letter, Dec. 31?

A. That is all, I believe, that I sent.

Q. I will ask you to explain something else in this letter, if you please: 'In case it is absolutely necessary to raise more money forthwith to go into the purchase you can take my Central stock and place it as collateral, and raise money on it; but believing that some purchases may be on time, this may not be necessary.' Now, sir, to what purchases did you allude in that letter that was alluding to the purchase of Section 24?

A. Torch Lake.

Q. Did you allude to that; did he think it was intended to refer more especially to Section 24; how much did you understand was to be paid for the purchase of that land mentioned in this letter of December 31; how much to be paid by all parties interested?

A. I do not know how much was to be paid by all parties interested.

Q. What was the gross amount to be paid for the purchase?

A. It was not known at the time; it could not have been known, because the stock was held by individuals, and that stock had to be bought.

Q. It was in the shape of stock then?

A. Part of it was in the shape of stock and a part of it in the shape of land, as I understand.

Q. It was with reference to that purchase that you authorized Palmer to pledge your stock and raise more money?

A. It was with regard to Section 24.

Q. That is the land mentioned in this letter?

A. That was not in the stock.

Q. What portion of the land mentioned in this letter was in stock?

A. The Torch Lake.

Q. There is not anything said about Torch Lake; it says Section 24 and Penn?

A. Penn and Torch Lake mean the same thing.

Q. In Section 24 his title was to be secured first, and what was purchased of Penn was stock of this Torch Lake?

A. Stock of this Torch Lake and Penn.

Q. It is the same thing?

A. Yes, sir.

Q. The amount of that stock to be purchased—was there anything definite?

A. Yes, sir.

Q. Left at the discretion of Palmer?

548 A. Yes, sir; that is, to purchase a certain amount of it. I will find this letter qualifying the purchase.

Q. I wish you would find the letter qualifying it.

*Re-direct examination.*

Q. Did Loring ever send any Penn or Torch Lake stock?

A. No.

Q. Or any in 24?

A. 24 was not purchased; there was not a contract made for it. It was not purchased, to the best of my knowledge and belief. There was an understanding about a contract to be made for it, and if it was taken up under contract there was to be time allowed to pay the money. It belonged to the St. Mary's Mineral Land Co.

Q. How was it about Torch Lake or Penn—was it organized or purchased; do you know anything about it?

A. There was an organization on the land. How far that organization covered the land I am not positive. I understood it was on the north half. The south half was not formed into a company, as it were, and stocks issued; but on the north half there was stock issued—certificates of stock—and I supposed a perfect organization of a mining company.

Q. Has Loring shown you by any account the application of any part of this $25,000 on Torch Lake or Penn except the accounts which you have produced?

A. None that I am aware of.

Q. Has Mr. Loring shown you by any account or in any other way the application of that $25,000 in any way to 24?

A. No, sir.

Q. Has he made any pretence to?

A. No, sir.

Q. Did you ever hear in any way that he had ever applied any portion of that money for an interest for you in 24?

A. 24 was not purchased.

Q. And he has not accounted to you in any way with respect to Torch Lake and Penn except so far as this account shows?

A. No farther than the account will show, although in a letter to Palmer, in making out a statement of account, he says: 'Frue is not charged with his interest in Torch Lake, meaning Penn and the south half of 35.'"

Defendant's counsel also introduces in evidence the testimony of Mr. Palmer, taken on the trial of 1874, as follows:

"Mr. Palmer recalled.

*Cross-examined by Mr. Russell.*

Q. I believe you remarked that you were in New York in the winter of 1866–67 a good deal?

549 A. Yes, sir; that is, I was there frequently, and spent a week or two sometimes at a time.

Q. In that winter of 1866–'67, did you not in New York make purchases of land and purchases of Torch Lake stock also, in which land and in which stock Frue had a share?

A. I did; in which all the parties that have been spoken of here had an interest.

Q. Are you able to state, with some approach to definiteness, how much money you expended in those purchases?

A. The land which was bought of the Ossipee cost $25,000, and the Torch Lake stock, with the land and property connected with it—I am not able to state the amount purchased—must have amounted to $20,000 or more.

Q. That included the stock, too?

A. No; the land connected with it was the adjoining land. The land was purchased by me and Sibley in this connection, of which Sibley had a part and Hall a part, Hoyt a part, Boston parties having a part, and myself and Captain Frue a part. It was purchased in certain proportions, which would have been established through this transaction.

Q. What was the cost of the Torch Lake property?

A. I do not pretend to state the cost of all these purchases, because all these parties were numerous. At the time, I knew.

Q. You state as nearly as you can recollect?

A. I think I understate it, perhaps considerably, when I say $20,000.

Q. What funds did you employ to pay that?

A. The funds that I employed to pay that was, say, $4,500 that came directly from Captain Frue, as I think. Loring sent the letters containing the remittances, and the balance was funds I obtained from Loring of these general funds; that is, I did not keep any account of that. I say there were collections made in Boston, and they took a portion of this purchase, and the amounts were balances drawn of Loring at the same time to make these purchases.

* * * * * *

Q. Will you be kind enough to state whether the matter of expenditures in connection with the Torch Lake Company and lands has ever been adjusted between the various parties in interest—settled?

A. I don't think it has in all respects. It was generally, in respect to all the parties, because the stock went directly to the parties in New York and Boston. I understood so. I believe that was the fact.

Q. So far as regards yourself and Captain Frue and Loring, was there ever any settlement or adjustment of that matter?

550 A. Between myself and Loring there was a settlement; that is, Loring took a certain amount, leaving the balance to me; that was the arrangement?

Q. You mean a closing up of the whole affair?

A. That is the understanding exactly—each one's proportion.

Q. You know what your proportions were. But has there ever been a final account with respect to the moneys expended, and the enterprise?

A. The moneys that were received in this transaction were a continuation.

Q. Of the other transaction, do you mean?

A. The transactions were a continuation.

Q. Of what?

A. The previous transaction.

Q. The transactions, then, were connected?

A. Yes, sir; I insisted with Mr. Loring that with what he called the land account he should treat me individually, as he did the others.

Q. I don't now make that inquiry. I merely addressed my question as to whether the land connected with the Torch Lake had ever been adjusted by a final accounting between you, from Mr. Loring?

A. I supposed there had been, but am not positive.

Q. That is your recollection?

A. That is my recollection.

* * * * * *

Q. You were asked in respect to whether the Torch Lake matter had been adjusted, and your answer escaped me. I merely ask you the question?

A. The several proportions of the interests of these purchases were adjusted.

*Re-cross-examination by Mr. Pond.*

Q. You say these $25,000 were forwarded to you by Mr. Loring from Boston to New York? In what form was it forwarded, in the original drafts?

A. In the original drafts.

Q. Sent down by Frue?

A. Yes, sir.

Q. And forwarded unendorsed?

A. Of course, if I received them in New York, as I think I did.

Q. Are you able to say that Loring opened that letter at all; that you did not receive them in the original letter in which Frue sent them?

A. I would not say that, but I would say this: I know that he did open some of them; I know that because I recollect it.

551 I would not say that he did open all of them, for they might have come in the original envelope.

Q. So that you cannot say but what that $21,000 passed directly from Frue to you?

A. I stated as I think it, but I would not be positive with that particularly; I know that some were.

Q. You know that they did come to you unendorsed?

A. Most certainly, they would not come otherwise.

Q. Negotiations for that land were made by you in New York were they not, and with Mr. Loring in Boston?

A. The negotiation for that land was decided upon by those interested in the original company.

Q. I mean you were the acting negotiator on the part of the associates?

A. I was made the acting man on the part of the parties who had been concerned.

Q. You also applied $4,500 of that money directly to the purchase of the Torch Lake interest, did you not?

A. I did, sir.

Q. That is for the Torch Lake stock?

A. Yes, sir; there is a memorandum to that effect. Those drafts had to be drafts on parties in New York.

Q. Was it, or was it not, a residue of the $25,000?

A. No, sir, not at all; it was after the other transaction, sometime.

Q. That $4,500 never went into the hands of Loring?

A. Unless he sent it to me in the way I have mentioned.

Q. It never went into his hands in such a way that he could use it?

A. The purchase was one——

Q. That is not my question. Did that $4,500, as it came from Frue, go into the hands of Loring, so he could use it?

A. Of course it did not.

Q. Can you tell in which one of the remittances from Noble that 25,000 and odd dollars was contained?

A. I could not tell without I could look up the dates; then I undoubtedly could.

Q. Could you tell from which remittance the $4,500 was taken?

A. No, I could not without looking very carefully, and comparing the dates of the transaction.".

Defendant's counsel also offers in evidence the following testimony given by Wm. B. Frue, on the trial of the case of Wm. B. Frue *vs.* Elisha T. Loring, tried in the circuit court of the United States for the eastern district of Michigan, in 1877, which is as follows:

552 "Q. I understand you to say that the money which you did send forward to Mr. Loring, and forming a part of this account, was sent forward upon other accounts and for other purposes?

A. If the thing had been carried out, the money would have been used, and I would have been in debt to Mr. Loring.

Q. I am asking now what it was sent forward for, no matter what it was used for?

A. For a contemplated purchase in section 24.

Q. Then you sent forward portions for other purposes than for the payment of your interest in these corporations, did you?

A. Yes, sir. I do not know but I ought to qualify my answer in regard to sending money forward to Loring for other purposes; there was a letter sent forward to Mr. Palmer requesting him to invest certain moneys, or a certain amount of money, in an outside concern, which I had reason to believe that the parties, meaning Mr. Loring, did not intend to invest in, and I requested a certain amount of money to be invested. Mr. Palmer——

Q. Then you sent forward——

A. It was not invested.

Q. I understand you, you do not know how that was; it was the conduct of other parties. Now how much money did you send forward distinctly for another purpose than upon these corporations?

A. I cannot give the exact amount.

Q. About how much?

A. I think about $12,000.

Q. When was that sent forward?

A. It must have been late in December, '66.

Q. And you say it was only $12,000.

A. It was only $12,000. There was a letter—if I can explain—there was a letter which enclosed certain moneys sent forward by Mr. Noble, and I afterwards qualified the amount, about $12,000.

Q. Did you not send upwards of $25,000 over your own signature to be applied to another and a different purpose?

A. I did not send the money myself.

Q. Send drafts I mean?

A. I did not send the drafts myself; not a single draft to Palmer; that is, myself, directly. Mr. Noble handled all the drafts that were sent forward.

Q. Mr. Noble was your clerk. I do not want any such prevarication as that; did you not direct him, then, and did you not sign a letter yourself, sending forward $25,000, for another and a distinct purpose?

A. He had a letter; I know in the usual form of sending remittances it would not be signed by myself, and I dictated a certain amount of instructions at the bottom of that letter, but I qualified it afterwards.

553 Q. Then you say that you did direct that there was $25,000 and odd to be used for another purpose. Now you directed that that remittance should be applied to another and a distinct purpose?

A. I do not remember that I directed the whole remittance that the letter enclosed.

Q. You have the original letter in your possession, have you not?

A. It must be here somewhere.

Q. Is that the letter to which you refer?

A. Yes, sir.

(Letter dated Dec. 31, 1866, offered in evidence, and marked Exhibit 1.)

Q. Those were the instructions under which $25,000 and odd of the moneys now charged in your account were forwarded to Mr. Palmer, were they not?

A. Yes, sir.

Q. In point of fact, were not purchases made in that section and in that company by Mr. Palmer, or through his agency, in which you were interested?

A. What section?

Q. The section mentioned in the letter, 24.

A. I am not aware that any lands were purchased by the party in section 24.

Q. Were they not in 10?

A. I have understood that there were certain purchases made.

Q. Do you not know that; have you not been interested in purchases?

A. I have called for a statement to show what interest I had, and it never was furnished me by Mr. Loring.

* * * * * *

Q. With reference to the letter of December 31, which contained the $2,500 and upwards of remittances, it appears that you gave authority that a part of that money might be invested in purchases in 24, in Torch Lake or Penn?

A. Torch Lake and Penn mean the same thing.

Q. Has Loring accounted to you in any way for any interest in Torch Lake or Penn or section 24, if he has purchased any such interest with this money?

A. There were no purchases made on 24. There were purchases made of Torch Lake and the south half of the sections. Torch Lake is organized from the north half of sections 35 and 36. The south half was also purchased, and I have called upon Loring——

(Objected to as immaterial.)

554 Q. Has anybody ever accounted to you for any interest in section 24 or Torch Lake or Penn for any part of that twenty-five thousand dollars, if any part was so invested?

(Objected to as immaterial, and not re-examination.)

Q. If any portion of this $25,000 referred to and enclosed in the letter of Dec. 31, 1866, was invested in Torch Lake or Penn or section 24, have you received any account of your interest or any interest in that property?

(Objected to as immaterial and hypothetical. Objection overruled. Exception for plaintiff.)

A. I have received no statement from any one.

Q. Have you received any interest or any stock?

A. I have received no interest."

* * * * * *

Defendant's counsel offers in evidence, from the testimony of Charles H. Palmer, given upon the trial of Frue *vs.* Loring, of 1877, the following:

"Q. Did you ever have any moneys from Mr. Frue to pay Mr. Loring, the defendant?

A. I did.

Q. When?

A. I had them, commencing in November, 1866, to March, 1867.

Q. State in detail the amounts so received from Mr. Frue?

A. November 8th, 1866, $2,000; November 10th, $10,970; November 14th, $19,960.40; November 16th, $4,988.39; November 22d, $2,675; December 31, $25,401.48; February 4th, 1867, $14,480.94; February 13th, $11,544; February 23d, $5,940.93; March 22d, $13,438.66—that came to Mr. Loring while I was absent; March 30th, $2,900—that also came to Mr. Loring while I was absent from Boston.

Q. Making an aggregate of what?

A. $114,299.80.

Q. You say you paid these amounts mentioned to Mr. Loring?

A. Yes, sir.

Q. From whom did you receive them?

A. I received them from Captain Frue.

Q. At what time did you place these several moneys in the hands of Mr. Loring, at the dates mentioned?

A. At the dates I think they were received; that is, when I received the money. I paid it myself.

* * * * * *

Q. You received that remittance of December 31; was all the money paid in to Mr. Loring, do you say?

A. All paid in to Mr. Loring. He received all the drafts.

Q. Was that draft to Mr. Sibley paid him at that time?

A. That was paid him.

Q. At the time?

555 A. Not at the time.

Q. By whom?

A. By Mr. Sibley.

Q. How do you say that you passed it to him; how came you to say that?

A. The draft on Mr. Sibley came in the letter, and Mr. Loring passed it to me.

Q. Were not all the contents of that letter passed to you?

A. Very likely, for the purpose of endorsement; but not all passed to me; not any of it passed to me.

Q. What had Mr. Loring to do with the money that Mr. Frue sent you to purchase Torch Lake interest?

A. He had all to do with it; all went to him.

Q. I am asking what he had to do with that. How came you to pay to Loring the money that Frue sent you for a special purpose viz., to purchase Torch Lake?

A. It was because I did not use it for the purpose of purchasing it. We did not decide to make that purchase, and we did not use it for that purpose.

Q. Do you say you made no Torch Lake purchase?

A. I say I made no Torch Lake purchase.

Q. And you had nothing to do with any Torch Lake purchase?

A. I had something to do, as being one that counseled the purchase of Torch Lake stock. But I did not make ihs purchase.

Q. You did not make the purchase?

A. No, sir.

Q. Did you not make the purchase upon Torch Lake, and make the drafts upon Mr. Loring from these very moneys that you yourself paid into his hands to pay for this purchase; think of that?

A. Whatever purchase was made in Torch Lake was made by Mr. Sibley, and all the transactions went through Mr. Loring's hands.

Q. The question is, whether you did not draw on Mr. Loring to pay for that very purchase on Torch Lake?

A. It is possible that there might have been some drafts, but I do not remember any whatever.

Q. You have no recollection of any money being paid by you or through you for that Torch Lake purchase?

A. I recollect that there was $4,450 of drafts on the Grand Portage, which Mr. Loring gave me to make purchase on Torch Lake—that is, to give Mr. Sibley to do that—and I gave it to Mr. Sibley, and he did make the purchase. That is the only transaction that I remember.

Q. When were those Torch Lake purchases made?

A. They were made in January, February, and March, of 1867.

Q. Look at these several drafts, all drawn by you upon Mr.
556 Loring, and see whether they are not the drafts which you drew to make that Torch Lake purchase?

A. These were the drafts that I gave to Mr. Sibley to make those purchases, Mr. Loring having authorized me to do this, and having received the funds to make the purchases.

Q. With reference to his receiving the funds—you refer to the $25,000 which had been put into his hands?

A. No.

Q. What other funds had you received to make those purchases?

A. I did not make any purchases out of any specific money.

Q. What funds had he received into his hands from this Torch Lake purchase, if it was not that $25,000 that was sent for that specific purpose?

A. The purchases that were made for Torch Lake were for different purposes, made by Mr. Sibley, and the moneys were paid to Mr. Loring.

Q. What moneys were paid to Mr. Loring?

A. Mr. Clark and Mr. Bigelow——

Q. Have you any personal knowledge of any such thing?

A. I simply know that he had the stock. I had nothing to do with the details of that transaction.

Q. How came you to draw upon Mr. Loring for $21,000 to pay for that Torch Lake purchase?

A. Possibly because Mr. Loring, you know, authorized me to do that.

Q. How?

A. He told me to do that, and I never understood that I was drawing upon any $25,000.

Q. What did you think you were drawing on?

A. I was drawing on Mr. Loring for what he authorized me to do. Mr. Loring decided not to make a purchase of $25,000 for Capt. Frue. We never acted upon it.

Q. Loring had nothing to do with it, had he?

A. We decided not to act upon it.

Q. Did Loring have anything to do with it? Was not that letter sent you by Captain Frue, and did it authorize you to employ Mr. Loring to have anything to do with it?

A. I wrote to Captain Frue——

Q. You need not state what you wrote without producing the letter?

A. I paid the moneys to Loring.

Q. But you at the same time furnished him, did you not, with a copy of this letter, showing the purchase for which this money was sent you?

A. I did.

Q. Showed him the letter?

557 A. Yes, sir.

Q. Now, sir, that money was then in his hands. He knew that it was sent for that Torch Lake purchase in January and February. You made these Torch Lake purchases and drew on him for $21,000, did you not?

A. I drew on him for whatever those drafts were. Loring and myself decided not to use that authority of Captain Frue; that we would not make the purchase, and we never did.

Q. You did not make any Torch Lake purchases?

A. We did not make any purchases. We never acted upon it. We decided it was improper, and we never acted upon it.

Q. How came you to make the purchases on Torch Lake?

A. Loring authorized me to make those purchases, and to receive the money from other parties.

Q. If it was improper, why were they purchased?

A. It was improper for one person to make a purchase of a large amount outside of others who were connected with the business.

Q. Why did Loring have anything to do with the Capt. Frue matter; the authority was not to him, was it—it was to you?

A. We both decided not to have anything to do with it.

Q. How came you to have any decision about it; it was not addressed to him, was it?

A. But we consulted about it, and we decided not to act upon that authority.

Q. Why did you consult, when Loring had nothing to do about it?

A. Because it looked to me improper to step outside of an association and buy a particularly good thing for one party and a particularly bad thing for another; it was not exactly what should be done, and we decided not to do it, and it was the understanding with all the parties; we did not think that was exactly right.

Q. When that purchase was made what was the arrangement about the various shares?

A. In the purchases there were parties down there that paid for their stock, and the understanding was that the division should be according to the general division.

Q. Was not the understanding that Mr. Frue was to have 3,000 shares of the stock?

A. I think there was a general understanding; that is, that was expected to be.

Q. And the purchase was completed?

A. Yes, sir.

* * * * * * * * * * *

Q. Through whom were the purchases, if any were made, of Torch Lake or Penn made in New York?

558 A. They were made through Mr. Sibley.

Q. I understood you to say on your cross-examination that no part of this twenty-five thousand dollar remittance, made Dec. 31 by Mr. Frue, was used in the Torch Lake purchase?

A. I think it was not. The only particular fund that I know of was the $4,450; that is the only one.

Q. The $4,450 that you used was used in the Douglass-Sheldon purchase, was it not?

A. No; it was used in Torch Lake. That was a draft upon the Grand Portage Company, given to Bigelow in New York, and he put it into the hands of Mr. Sibley.

Q. Why did you not do as Mr. Frue authorized you to do, in the letter of Dec. 31, in respect to an investment in Torch Lake of $25,000?

A. In the first place, we did not purchase the most expensive part, that is section 24.

Q. That was abandoned?

A. That was abandoned. In the second place, we did not purchase scarcely any stock at that time, and we did not think it proper to purchase for any individual separately.

Q. If you know, state from whom Mr. Loring received the funds that he authorized Mr. Sibley to make the Torch Lake purchase with?

A. I don't know; he received the funds for that purpose from several individuals.

Q. Where did they live?

A. They lived in Boston.

Q. Then the purchase was not made for Frue, but for Boston parties?

A. For Boston parties and for Frue and the other parties.

Q. Frue was to be admitted?

A. Yes, sir.

Q. Do you know whether Mr. Loring has ever given to Mr. Frue any interest in the Torch Lake or Penn?

A. I think he has charged him with one, but never given it to him.

Q. Now, sir, look at this account, for instance. (Hands a paper to witness.) Do you know where that account came from?

A. It came from Mr. Loring.

Q. Why do you say that?

A. His handwriting is on it.

Q. What part of it is his handwriting; read that part that is in his handwriting?

A. "These items do not appear in the account current between C. H. Palmer and E. T. Loring." I cannot read the rest.

Q. Whose handwriting is the body of the account in?

559 A. The clerk of Mr. Loring.

Q. Do you know that?

A. I know his handwriting.

Q. Was it rendered in this transaction—this account by Mr. Loring?

A. It was; yes, sir.

Q. To whom was it rendered?

A. It is in my name, I think.

(The paper is marked Exhibit A 1, and offered in evidence.)

Mr. WALKER: What is the object.

COUNSEL: It has various objects. It proves various facts in this case.

(Objected to as immaterial and irrelevant. Objection overruled.)

Q. What do you mean by Torch Lake and Penn?

A. I mean a mining company organized upon sections 35 and 36.

Q. Torch Lake and Penn. And section 24, spoken of in Mr. Frue's letter of December 31, was abandoned?

A. Was abandoned.

Q. No purchase made?

A. None whatever.

Q. You have been made to say by Judge Walker that some of the former testimony you gave was not true. Did you mean that you were mistaken, or that you intended not to tell the truth?

A. I meant to say that I have forgotten a certain class of facts. I was mistaken in that testimony. I was mistaken.

Q. Did you take any other part in the negotiations for Torch Lake and Penn, in New York, than to pay the money to Mr. Sibley?

A. No sir, I did not.
Q. You kept in the back-ground, did you not?
A. I did not appear at all.
Q. Mr. Sibley made the payments?
A. He made the payments.
Q. Do you know whether Mr. Loring communicated directly with Mr. Sibley upon the subjects?
A. He did, yes."

It is admitted that William B. Frue died on the 17th of January, 1881.

Chas. H. Palmer, complainant, recalled own his on behalf, examined by Mr. Post:

Q. I want to ask you if you have the bill of particulars in the suit which was begun by Elisha T. Loring against you in the circuit court of the United States for the eastern district of Michigan as referred to in the testimony?
A. Yes, sir.
560 Q. Which is referred to by Mr. Loring in his testimony?
A. Yes, sir.

(A paper is shown to the witness.)

Q. That is the bill of particulars which was served in the suit, is it not?
A. Yes, sir.

The bill of particulars is offered in evidence, and marked "Exhibit 125," of which the following is a copy:

United States Circuit Court, Eastern District of Michigan.

ELISHA T. LORING, *vs.* CHARLES H. PALMER.

*Bill of Particulars under Common Counts.*

CHARLES H. PALMER, IN ACCOUNT WITH E. T. LORING.

| 1869. | DR. | INTEREST ACC'T 8 PER CT. | | |
|---|---|---|---|---|
| Jan'y 6, | To cash paid his note | $3 24 | $126 67 | $5,000 00 |
| 15, | " " | 3 15 | 116 67 | 5,000 00 |
| Feb. 17, | renewing " | 2 18 | 3 24 | 200 00 |
| 20, | paid his " | 2 10 | 77 77 | 5,000 00 |
| March 3, | " " | 1 27 | 63 33 | 5,000 00 |
| 20, | for sale of stock | 1 10 | 22 | 25 80 |
| Mar. 31, | Nov. 10, 1868, Asst. Adams Stock | 5 20 | 53 80 | 1,424 14 |
| | | | $441 70 | |
| April 30, | To bal. interest to date | ---- | ------ | 189 23 $21,849 17 |
| | | | | $21,849 17 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 1869. | | | | | | |
| Apr. | 30, | To balance | 4 | $114 26 | | $4,283 02 |
| Aug. | 13, | cash paid his note | 18 | 20 80 | $5,000 00 | |
| | 28, | " " " | 3 | 3 33 | 5,000 00 | |
| | 31, | bal. of interest to date | | $137 54 | 137 54 | 10,137 54 |
| | | | | | | $14,420 56 |

561

| | | | | | | |
|---|---|---|---|---|---|---|
| Aug. | 31, | To balance | 4 | 384 56 | ------ | $1,420 56 |
| Dec. | 31, | " of interest to date | ---- | ------ | ------ | 384 56 |
| | | | | | | $14,805 12 |
| Dec. | 31, | To balance | 4 | 394 80 | ------ | $14,805 12 |
| 1870. | | | | | | |
| April | 30, | " of interest to date | ---- | ------ | ------ | 394 80 |
| | | | | | | $15,199 92 |
| April | 30, | To balance | 4 | 506 67 | ------ | $15,199 92 |
| Sept. | 30, | " of interest to date | ---- | ------ | ------ | 506 67 |
| | | | | | | $15,706 59 |
| | | To balance | ---- | ------ | ------ | $9,529 52 |

| | | | | | |
|---|---|---|---|---|---|
| 1868. | | Contra, Cr. | Interest Acc't 7 Per Ct. | | |
| Dec. | 31, | By balance as of date, 4 mo | $111 16 | ------ | $4,764 21 |
| 1869. | | | | | |
| Feb. | 16, | cash rec'd from dist. of note, $2.14 | 69 09 | $4,801 94 | |
| Mar. | 20, | " " sale of Hecla stock $1.10 | 62 22 | 8,000 00 | |
| Apr. | 30, | balance | $242 47 | 4,283 02 | 17,084 96 |
| | | | | | $21,849 17 |
| Aug. | 31, | By balance as of date | | | $14,420 56 |
| | | | | | $14,420 56 |
| Dec. | 31, | By balance as of date | | | $14,805 12 |
| | | | | | $14,805 12 |
| 1870. | | | | | |
| Apr. | 30, | By balance as of date | | | $15,199 92 |
| | | | | | $15,199 92 |
| Sept. | 30, | By am't received from sale of collateral stock | | | $6,177 07 |
| | 30, | balance as of date | | | 9,529 52 |
| | | | | | $15,706 59 |

562 *Copy of Note.*

$5,108 $\frac{33}{100}$ Boston, *December 5th*, 1868.

Three months after date I promise to pay to the order of Elisha T. Loring, five thousand one hundred and three $\frac{33}{100}$ dollars.

Value received, (Sgd) CHAS. H. PALMER.

[Internal, $2.60, Revenue Stamp.]

*Copy of Note.*

$5,103 33/100 BOSTON, *Dec. 9th*, 1868.

Three months after date I promise to pay to the order of Elisha T. Loring five thousand one hundred and three 33/100 dollars.

Value received, (Sgd) CHAS. H. PALMER.

[$2.60, Internal Revenue Stamp.]

(*Copy of Agreement.*)

I have this day signed two notes on hand, payable to Elisha T. Loring or order, on the 8th and 12th of March next, respectively, each for the sum of five thousand one hundred and three and 33-100 dollars, in payment of two notes of five thousand dollars each, given by me and paid by him, on the 15th and 19th inst.

These notes are given by me with the express understanding that I will meet the payments of them at maturity from other resources than the securities now held in trust by said Loring for any indebtedness of mine to him by reason of his endorsement of notes or otherwise.

(Signed) CHAS. H. PALMER.

BOSTON, *Dec.* 30, 1868.

Q. You have seen the testimony given in Boston by Mr. Loring?

A. Yes, sir.

Q. He testifies there that the $50 charged in the bill as expenses to Pittsburgh, was paid to you in person, and the date of the charge on the account is November 3d, 1866; will you state whether, on November 3d, you were in Boston?

A. No, sir, I was on Lake Superior.

Q. Have you a letter from Mr. Loring addressed to you of that date from Boston, addressed to you at Houghton?

A. Yes, sir, this is the letter (producing the letter.)

Mr. POST: I exhibit the letter to Judge Walker as simply show- the date, I don't care about the contents.

Q. Now, do you know when you did go to Boston?

A. I left Lake Superior on the 5th of November, and I arrived in this city on the 7th; and then I went to New York
563 from here and arrived in Boston on the morning of the 11th of November.

Q. Have you any letters written of those dates, between the 3d and the 11th?

A. I have letters of all the dates, and written at all those places.

Q. These letters written from where?

A. Written on the steamer Lac La Belle, from Marquette, on the 5th, and from the Russell House on the 7th, and from Boston on the morning of the 11th.

Q. You may state, if you know, what the trip to Pittsburgh was about; just generally.

A. The trip to Pittsburgh was in reference to the lands owned by a gentleman in Pittsburgh, and E. D. Brigham in Boston.

Q. What was that gentleman's name?

A. It was Richard Patrick. Those lands were in sections 34 and 27; the Calumet vein ran through it.

Q. What do you know about Mr. Loring's going there?

A. I know that he said that he went, and Mr. Brigham also told me——

Objected to.

Mr. POST. You need not tell that.

The WITNESS. There is no question about the time; Mr. Loring has forgotten.

Q. In this testimony of Mr. Loring's there are telegraph items spoken of as your expenses; were the items charged in that account your expenses, your telegrams?

A. They are not; my telegrams were directed to Boston, to the Revere House and included in my bills. My telegrams to New York were directed to 22 Pine street; and there were telegrams during this period to Houghton, and those other two places amounting to $488 without being complete.

Q. You have the Boston hotel bills with the telegrams figured in?

A. Yes, sir.

564 Q. I will ask you whether, since Mr. Frue's death, you have found in his possession certain letters from you to him, with reference to these purchases in Penn and Torch Lake?

A. Not since his death; these were given to me before; this last fall.

Q. These letters are letters dated February 24th, 1867, and April 6th, 1867, addressed by you from the Revere House, Boston, to Wm. B. Frue; are those letters in your handwriting? (Showing letters to witness.)

A. Yes, sir.

Q. Were they sent to Frue?

A. Yes, sir.

Q. Received by him?

A. Yes, sir.

Complainant's counsel offers the letters in evidence, and they are marked Exhibits 126, 127.

The following is a copy of Exhibit 126:

REVERE HOUSE, BOSTON, *Feb. 24th*, 1867.

W. B. FRUE, Esq.

DEAR SIR: I have your letters of the 11th and 13th, and one containing $11,000 and one of drafts as advised. All money I pass to Loring as soon as received.

I think the map agrees as well as could be expected, made from memory and without one accurate measurement.

Dodge will be soon with you, and if you can keep him unknown all will be right. We have 12-20 of the south half of Penn, and shall get all or bring what we do not get into our interest. In the same way we shall get as much of the north half. Get your *correct knowledge* and get it to me, and keep everthing hid there.

I have the *control* of thirteen, and can buy it before any one can get ahead of me. I do want a correct knowledge of the true po-

sition of Lantern before I buy thirteen, unless I shall be forced to buy it to save it, and I would try and cut the belt in a way not to be exposed.

Hurlburt is out of Calumet and Hecla. He did not buy the M. Co.'s land in 18 and 17, as he had not the money. Their
565 railroad is laid through 12, 7, 18 and 19. From this you can see what they mean. I expect to go to New York to-morrow to see about Penn.

We get the south half of Penn so far—1-5 for $3,200 and 5-10 for $12,500—one-tenth of this will be given back at the same price as paid. This we did to get influence to buy. We are doing the best we can. Sibley is smart, but very slow.

Keep Dodge very close; he can have nothing unless he does as you want him.

Truly yours, CHAS. H. PALMER.

The following is a copy of Exhibit 127:

REVERE HOUSE, BOSTON, *April* 6, 1867.

W. B. FRUE, Esq.

DEAR SIR: I have you letters of the 26th and 29th, the latter containing diagram of your explorations for Lantern. This is very good. I have supposed the large boulder to be north of the center of 11 instead of 600 hundred feet east. Where is the boulder of two and a half tons?

We have the control of N. Penn—Mr. L., you, and myself now have 7,000 shares in N. P. and 8,500 in S. Penn. I expect to make N. Penn 8,500 shares also. I go to N. Y. to-morrow for this purpose. You must not promise anything in Penn till L. and I come up in May. I say this so that there may be no disappointment in the matter, though I have made calculations that will be done when we come up. Hall and his friends have 3,000 shares in each. This was because Hall helped in Providence. Sibley 2,000 in each.

I have done all I could in this matter. Send down money if you have it.

In regard to 13, I watch it close. No one is moving there at all; I shall know the first sign. This cannot be bought till we are sure of the position and character of Lantern. You are getting close to the N. W. corner of the 80 reserved by Sheldon and B. If Lantern should cut this 80 we must use deep strategy to get it. I do not feel by any means confident that you are as close to the true
566 position of Lantern as you think, though you have good signs that you are. Lantern must be a monster, and what you say about its smelting qualities are very encouraging and important. Do see Agassis about a R. R. to to Portage Lake, and the people at Houghton ought to take $50,000 of the stock. This will control the whole matter if they will take this amount of stock. If Lantern exists, there must be a still more eastern belt.

After Penn, which is cheap, we can get no land excepting at

large price, and we must not buy unless upon certain knowledge of the value. I am inclined to think that by this time you are well satisfied that I did not go into Western scheme unless the Allouez vein should prove more than we have calculated. It is upon the Allouez vein that Smith claims to have bought it. Nothing can be done with Western scheme here with the knowledge we have of it.

Rickard in 1859 went out into the region of 26, 35, and 34, as near as he can describe it, with a Frenchman who had seen copper in large quantities sticking out of the ground. He was in an infernal swamp. Both got tired out, and the Frenchman could not find the place. R. believes the Frenchman was honest, and had seen something. As soon as the snow is off, have a careful search made in all that region, to see if anything can be discovered. You know now where to look for things; in 34 we may get land.

Truly yours, CHAS. H. PALMER.

Q. I hand you a letter dated June 28th, 1867, from defendant Loring to yourself. I will ask you in whose handwriting it is?

A. Mr. Loring's.

Q. I will ask you if it was sent to you?

A. It was, sir.

Q. And received by you by mail?

A. Yes, sir.

Q. About the time of its date?

A. Yes, sir.

567 Q. It refers to certain accounts; I will ask you if the two ccounts which I now hand you were enclosed in that letter?

(Handing papers to witness.)

A. Yes, sir, they were, the same date.

Complainant's counsel offers in evidence the letter identified by the witness, which is marked Exhibit 128, of which the following is a copy:

ADAMS MINING COMPANY,
TREASURER'S OFFICE, No. 11 CHANGE AVE.,
BOSTON, *June* 28, 1867.

C. H. PALMER, Esq., *Houghton:*

DEAR SIR: I am without any of yours in hand to reply to since mine of the 25th, and have nothing of particular interest to communicate at this time; still a few remarks seem called for in connection with the enclosed accounts. The stock account, made up with Frue and his associates, I believe to be correct; still I cannot vouch for it until the accounts are brought to a close and prove to be correct by *trial* balance. You doubtless will be surprised, as well as myself, at the footings of this account. But please bear in mind that Frue's interest in Torch Lake, sections 35 and 36, *all of which you have paid for*, is not included in his account. This with *cost* of 984 shares Ossipee, not yet settled for, with the $11,366.66, cost of

your and Charles' stock, as well as the cost of your interest in T. L. and 35 and 36, cannot vary much from the balance to your debit in the mem'n herewith. I enclose the stock account of yourself and friends, showing the amount of debit and credit in the assessments account, all of which appears in your general account, though in different form.

Yours, E. T. LORING.

Complainant's counsel also offers in evidence the account contained in the letter identified by the witness, which is marked Exhibit 129, of which the following is a copy:

568

*Memorandum of Stock Account with William B. Frue and associates in the Ossipee, Kearsarge, and Iroquois Mining Companies.*

| | | | | |
|---|---|---|---|---|
| 1866. | | | | |
| Nov. 8, | Am't of sundry drafts credited C. H. Palmer | $3,000 00* | | |
| 10, | " " " " | 10,970 00* | | |
| 14, | " " " " | 19,960 40* | | |
| 16, | " " " " | 4,988 39 | | |
| 22, | " " " " | 2,675 00 | | $41,593 79 |
| Dec. 31, | " " " " | $25,401 48 | | |
| 1867. | Less draft on A. H. S. not collected | 6,901 48 | | 18,500 00 |
| Feb. 4, | Of sundry drafts credit C. H. P. | 14,480 94 | | |
| 13, | " " " " | 11,554 00 | | 26,024 94 |
| 23, | " " " " | $5,940 93 | | |
| | Less amount collected by C. H. P. | 4,450 00 | | 1,490 93 |
| Mar. 22, | Of sundry drafts " " | 13,438 66 | | |
| 20, | " " " | 2,900 00 | | 16,338 66 |
| | | | | $103,943 82 |
| | Balance | ------ | | $3,601 99 |
| Ossipee stock, | 2,000 shares, sold at $11¼ | $23,000 00 | | |
| " | 501 " " $4.83⅓ | 2,421 50 | | 25,421 50 |
| W. B. Frue, | 2,250 | | | |
| T. C. Hodgson, | 1,313 | 5,251 | | |
| D. Hodgson, | 1,313 | 501 less cert's issued. | | |
| W. R. Noble, | 375 | 4,750 shs., at $3.33⅓ | ------ | 15,833 33 |
| Kearsarge stock, | 5,000 shares, sold at $10.00 | 50,000 00 | | |
| " | 2,211 dld. W. B. F., at $2.66⅔ | 5,896 00 | | |
| W. B. Frue, | 1,500 | | | |
| T. C. Hodgson, | 750 | 3,150 | | |
| D. Hodgson, | 750 | 2,211 am't issued. | | |
| W. R. Noble, | 150 | 939 shs., $1.16⅔ | 1,095 50 | |

| | | | | |
|---|---|---|---|---|
| Iroquois Stock. | | | | |
| W. B. Frue, 2,000 | | | | |
| T. C. Hodgson, 1,000 | 4,200 shs., at 50c. | | $2,100 00 | $59,091 50 |
| D. Hodgson, 1,000 | | | | |
| W. R. Noble, 200 | | | | |
| Balance | | | | 3,601 09 |
| | | | | $103,948 32 |

Boston, *June* 28, 1867.
Errors and omissions excepted.
(Signed) ELISHA T. LORING.

569 The items above embrace all, I believe, that has been remitted. Those marked * do not appear to Mr. Palmer's credit for the reason they were used in the purchase of lands, or nearly so, and the *cost* of lands, as far as known, was placed to his credit.

Another point is, the amounts will not appear in his account corresponding with the above, for the reason that the above was copied from Noble's letters accompanying the drafts, and the proceeds of the drafts remitted was placed to his credit on the date of the receipt in cash.

Boston, *June* 28, 1867.
Errors and omissions excepted.
(Signed) ELISHA T. LORING.

Complainant's counsel offer in evidence the other account identified by the witness as enclosed in the letter shown him, which is marked Exhibit 130, of which the following is a copy:

*Stock account of C. H. Palmer and friends in Ossipee, Kearsarge, and Iroquois Mining Companies.*

| | | | |
|---|---|---|---|
| 2,220 shares | Ossipee stock, C. H. P., at $3.33⅓ | $7,400 00 | |
| 375 | C. H. P., Jr. | 1,250 00 | |
| 1,300 | Kearsarge stock, C. H. P., $1.16⅔ | 1,516 66 | |
| 2,400 | Iroquois stock, C. H. P., 50c | 1,200 00 | $11,366 66 |
| 1,470 | Ossipee stock, A. H. S., $3.33⅓ | 4,900 00 | |
| 750 | Kearsarge stock, A. H. S., $2.66⅔ | 2,000 00 | |
| 1,000 | Iroquois stock, A. H. S., 50c. | 500 00 | 7,400 00 |
| 250 | Ossipee stock, P. Hall, $4.83⅓ | 1,208 33 | |
| 500 | Kearsarge stock, P. Hall, $2.66⅔ | 1,333 34 | 2,541 67 |
| 375 | Ossipee stock, S. M., $4.83⅓ | 1,812 50 | 1,812 50 |
| | | | $23,120 83 |

570

*Memorandum of Assets paid by C. H. Palmer to Ossipee and Kearsarge Companies.*

| | | | |
|---|---|---|---|
| 2,220 shares | Ossipee, C. H. Palmer, at $2.00 | $4,440 00 | |
| 1,470 | A. H. Sibley, $2 00 | 2,940 00 | |
| 375 | S. Mandlebaum, $3.50 | 1,312 50 | $8,692 50 |
| 250 | Peleg Hall, $3.50 | 875 00 | |
| 1,300 | Kearsarge, C. H. Palmer, 50c. | 650 00 | |
| 750 | A. H Sibley, $2.00 | 1,500 00 | |
| 500 | P. Hall, $2.00 | 1,000 00 | 4,025 00 |
| | | | $12,717 50 |

Boston, *June* 28.
Errors and omissions excepted.
(Signed) ELISHA T. LORING.

Q. I show you a letter dated Jan. 4th, 1868, addressed by Mr. Loring to yourself in New York, and ask you whether that is in Mr. Loring's handwriting?

A. It is, yes, sir.

Q. Whether it was sent to you about the time of its date?

A. Yes, sir.

Q. And received by you?

A. Yes, sir.

Q. I will ask you whether the paper I now exhibit to you was the account enclosed therein?

A. Yes, sir, it was.

The letter and account are offered in evidence, and are marked 131, 132. The following is a copy of Exhibit 131:

OFFICE OF THE SO. PEWABIC COPPER COMPANY,
31 KILBY STREET, BOSTON, *January* 4, 1868.

C. H. PALMER, Esq., *New York:*

DEAR SIR: Agreeable to my remark to you of yesterday, I herewith send copy of the account embracing the cost value of your interest in the various purchases made in connection with Frue and others. This result may enable you to account more satisfactorily to yourself, what has become of our money. The balance
571 now in your favor after squaring the account with Frue, is $19,685.11, leaving you indebted to the Ossipee Mining Company, balance due on assessments, $2,234.44. This balance of $19,685.11 is an offset of so much in our private account, and reduces that to quite a small item.

I wish you to see if Douglas will buy 10 shares Houghton bk. If not, ask if he knows any one who will. Price, one hundred dollars per share, January dividend off.

Yours truly,

E. T. LORING.

The following is a copy of Exhibit 132:

CHARLES H. PALMER, IN ACCOUNT WITH WILLIAM B. FRUE.

| | | | |
|---|---|---|---|
| 1866. | | | |
| Nov. 8, | Drft. Wm. R. Noble on R. H. Rickard | | $2,000 00 |
| " | " S. Mandlebaum on Dupee, Beck, and Sayles | | 1,000 00 |
| " 14, | On sundry persons to C. H. P. | | 19,960 40 |
| " 16, | " " " | | 4,988 39 |
| 1867. | | | |
| Feb. 23, | " " " | | 4,450 00 |
| 1866. | | | |
| Nov. 11, | " " coll. by E. T. L. | | 10,970 00 |
| " 22, | " " " " | | 2,675 00 |
| Dec. 31, | " $25,401.48, less drft. A. H. S., $6,901.48 | | 18,500 00 |
| 1867. | | | |
| Feb. 4, | " " " " | | 14,480 94 |
| " 13, | " | | 11,544 00 |
| " 23, | " | | 1,490 00 |
| Mar. 22, | " | | 13,438 66 |

| | | |
|---|---|---|
| 1866. | | |
| Mar. 30, | On sundry | $2,900 00 |
| Sept. 1, | Amt. of A. H. Sibley, bal. drft., $6,901.48 | 4,092 72 |
| | | $112,490 11 |
| | Balance | $3,868 78 |
| | " | 19,685 11 |
| | | $23,553 89 |

Cr.

| | | |
|---|---|---|
| By amt. rec'd for 5,000 shs. | Kearsarge | $50,000 00 |
| " " 2,000 " | Ossipee | 23,000 00 |
| " " 2,211 " | Kearsarge stock, $2 66⅔ | 5,896 00 |
| " " 939 " | " 1 16⅔ | 1,095 50 |
| " " 501 " | Ossipee " 4 83⅓ | 2,421 50 |
| " " 4,750 " | " " 3 33⅓ | 15,833 33 |
| 572 | | |
| " " 4,200 " | Iroquois " 50 | 2,100 00 |
| " " 2,600 " | Torch Lake stock, 1 50 | 3,900 00 |
| " " 3,500 " | Sec. 35 and 36, 1 25 | 4,375 00 |
| Balance | | 3,868 78 |
| | | $112,490 11 |

Value of Stock allotted C. H. P. & Son.

| | | |
|---|---|---|
| 2,220 shs. Ossipee, at $4.83⅓ | $10,730 00 | |
| Less bal. of arrears due the company | 2,234 44 | |
| | | $8,495 56 |
| 375 shs. C. H. P., Jr., at $4.83⅓ | $1,812 50 | |
| Less ass't of $1.50 per sh. pd. C. H. P., Jr. | 562 50 | |
| | | 1,250 00 |
| 400 shs., donated by W. B. F., at $4.83⅓ | | 1,933 33 |
| 1,800 " Kearsarge, at $2.66⅔ | | 4,800 00 |
| 2,400 " Iroquois, at 50c. | | 1,200 00 |
| 3,500 " Sec. 35 and 36, $1.25 | | 4,375 00 |
| 1,000 " Torch Lake, $1.50 | | 1,500 00 |
| | | $23,553 89 |
| Balance | | $19,685 11 |

Complainant's counsel also produces and offers in evidence the following account, which is marked Exhibit 133:

## Exhibit 133.

William B. Frue, in account with Chas. H. Palmer.

| | | | |
|---|---|---|---|
| To 5,000 shs. | Kearsarge, sold at | $10 00 | $50,000 00 |
| To 2,211 " | W. B. F., etc | 2 66⅔ | 5,896 00 |
| To 939 " | " | 1 16⅔ | 1,095 50 |
| To 2,000 " | Ossipee, sold at | 11 50 | 23,000 00 |
| To 501 " | W. B. F., etc. | 4 83⅓ | 2,421 50 |
| To 4,750 " | " | 3 33⅓ | 15,833 33 |
| To 3,000 " | in Sec. 35 and 36 | 1 25 | 3,750 00 |
| To 2,500 " | Torch Lake Min'g Co. | 1 50 | 3,900 00 |
| To 4,200 " | Iroquois, installments of 50c. per share | | 2,100 00 |

Credit.

| | | | |
|---|---|---|---|
| 1866. | | | |
| November 8, | By sundry drafts | | *$3,000 00 |
| " 14, | " " | | *19,960 40 |
| " 16, | " " | | *4,988 39 |

*These items do not appear in account current between C. H. P. and E. T. L., the former having used the funds in N. Y.

| | | | | |
|---|---|---|---|---|
| 1866. | | | | |
| November | 17, | By sundry drafts | | $10,970 00 |
| December | 10, | " " | | 2,675 00 |
| 1867. | | | | |
| January | 20, | " " | | 18,500 00 |
| February | 4, | " " | | 14,480 94 |
| " | 13, | " " | | 9,954 08 |
| 573 | | | | |
| " | 23, | " " | | 1,490 93 |
| " | 23, | " " | | 4,450 00 |
| April | 1, | By drafts on N. Y. | | 1,500 00 |
| " | 1, | " | Ossipee Mining Co. | 4,641 28 |
| " | | " | So. Pewabic Co. | 500 00 |
| " | | " | Adams Mining Co. | 500 00 |
| " | | " | Kearsarge " | 3,796 68 |
| " | | " | So. Pewabic " | 1,250 00 |
| " | 1, | " | Adams Mining Co. | 1,250 00 |
| " | 13, | Cash, amt. draft favor W. B. F. | | 2,900 00 |
| September | 1, | Sale of Adams stock, $3,982.70; int., $110.02; rec'd on ac. drft. on A. H. Sibley for $6,901.48 | | 4,092 72 |
| June | 27, | By drft. on Hecla Mining Co | | 150 00 |
| " | 27, | " | Hancock " | 20 00 |
| " | 27, | " | Huron " | 641 98 |
| " | 27, | " | Franklin " | 777 94 |

Q. I show you a letter from Mr. Loring to Mr. Frue, which was an exhibit in the other case, of date January 16, 1867. I ask you if that is Mr. Loring's handwriting?

A. Yes, sir.

Q. Did you get that from Mr. Frue?

A. I think I got that from Mr. Miller.

Q. It was an exhibit in the FrueLoring trial?

A. Yes, sir.

Complainant's counsel offers in evidence the letter just identified by the witness, which is marked Exhibit 134, of which the following is a copy:

SOUTH PEWABIC COPPER COMPANY,
TREASURER'S OFFICE, No. 11 CHANGE AVENUE,
BOSTON, *January* 16, 1867.

WM. B. FRUE, Esq., *Houghton*.

DEAR SIR: Enclosed you have a list of stock certificates, mailed to you to-day by request of Mr. Palmer. Those for 5,000 shares I understand from Mr. Palmer, are sales made by you on account, *pro rata*, of the *original* purchasers of the land. The balance,
574 2,211, are, I am informed, to be charged to the stock of yourself, and those interested with you in these sales, as you may direct.

You will confer a *great favor* in forwarding the account sales of *all* stock, both in the Kearsarge and Ossipee, made by you on joint account with purchasers, with the *earliest despatch* possible, as no settlement can be made here until we have these accounts, not forgetting to collect all assessments due the companies, being 3½ dollars on O and 2 dollars on K, and also all balances due from the

purchasers. For the first, Mr. Palmer and myself have become responsible to the treasurer for the amounts, and doubtless you will hold the certificates until both are paid.

Yours truly,

(Signed) E. T. LORING.

Mr. WALKER. To all these letters I object on the ground that they are incompetent and irrelevant.

Complainant's counsel offers in evidence the statement of account of the plaintiff in the suit of William B. Frue *vs.* Elisha T. Loring, being a copy of the paper which was passed to the jury on the trial of that case in 1877.

Objected to as incompetent.

Mr. POST Of course, you do not ask to have the fact proven.

Mr. WALKER. No, I know there was such a paper handed in.

The paper just offered is marked "Exhibit 135," of which the following is a copy:

ELISHA T. LORING, IN ACCOUNT WITH WILLIAM B. FRUE.

| | | | |
|---|---|---|---|
| 1867. | DR. | | |
| Nov. 8, | '66 to March 31, '67, For amount of money paid E. T. Loring | $114,299 | 80 |
| 1868. | | | |
| July 10, | For amount of money paid E. T. Loring in Houghton | 2,500 | 00 |
| | | $116,799 | 80 |
| | Less amount received for 5,000 shares Kearsarge stock, and 2,000 shares Ossipee stock on joint account | 73,000 | 00 |
| | | $43,799 | 80 |
| 575 | | | |
| | Profit on my share of 5,000 shares Kearsarge at $5.50 per share, sold | 5,775 | 00 |
| | Profit on my share of 2,000 shares of Ossipee stock at $6 per share, sold | 3,501 | 00 |
| | | $53,075 | 80 |
| 1867. | CR. | | |
| May, | By 2,053 shares Kearsarge stock received at cost of $4.50 per share | $9,238 | 50 |
| | " 418 shares Ossipee stock received at $5.50 per share | 2,299 | 00 |
| | " 4,200 shares Iroquois stock forfeited at 50c per share | 2,100 | 00 |
| | Balance | 39,438 | 30 |
| | | $53,075 | 80 |
| 1877. | DR. | | |
| | To balance | $39,438 | 30 |
| June 27, | For interest on $36,938 30 from March 31, '67, to June 27, '77, at 7 per cent., being 10 years, 2 months, 27 days | 26,481 | 68 |
| | For interest on $2,500, from July, 31, '68, to June 27, '77, being 8 years, 11 months and 4 days, at 7 per cent. | 1,562 | 36 |
| | | $67,482 | 34 |
| 1877. | | | |
| June 27, | To balance | $67,482 | 34 |

Complainant's counsel offer in evidence the charge of the court in the case of Wm. B. Frue *vs.* Elisha T. Loring, on the trial of 1877.

Objected to as irrelevant, immaterial, and incompetent.

*Charge of the Court.—Ballard, J.*

"You have heard that this action was instituted several years ago, and that in consequence of some opinion of the judges that presided, the plaintiff suffered a non-suit, and that subsequently this non-suit was set aside by another judge. This is all true, but it is a matter of no consideration in this case. We are trying the case as if it never had been tried before. We are trying the case as
576 if the plaintiff had never suffered a non-suit, or as if no evidence had ever been offered before. We are trying the case simply upon the evidence which has been adduced at this trial. I have been asked to refuse to proceed further with the case because the court has no jurisdiction, and I understand that the parties mean by this that the non-suit having been entered many terms ago, it is not within the power of the court to set aside that non-suit. This question has already been disposed of by Judge Swayne, and it would not be very becoming in me, I think, to differ from him on this point; in fact, I do not know that I should differ from him, were I to examine the question. I have not examined the question, but I now overrule the motion of the gentlemen.

I shall now proceed, as briefly as I can, to give the views which the court entertains of the law of the case. I shall not endeavor to detail to you the facts in a minute manner. It is the province of the jury to determine the facts, and not of the judge. If the judge should volunteer an opinion touching the facts, the jury would not be bound to receive it. You may pay such attention to the opinion of the court touching the facts as you may think the opinion is entitled to, but it is your sole province to determine the facts.

Now it appears by the uncontradicted testimony, that in the fall of 1866, the plaintiff and the defendant, alone or in connection with others, formed a design of organizing two companies for the purpose of conducting the business of mining. The land which the parties contemplated should be acquired and vested in the corporations, are situated in this State, near the southern shore of Lake Superior. In pursuance of this design, two corporations were afterwards organized, viz: the Kearsarge and the Ossipee. In these corporations respectively it was agreed that each party, that is, each promoter, should have stock in proportion to the amount of money contributed by him. It was contemplated that the corporations would be organized in Boston, in which city the defendant Loring then resided, and through his instrumentality or agency. It is not material to the design of the parties whether the two new corporations were organized, or whether the entire stock in the old corporations was acquired. That is, the material matter was that they should have two corporations, of which they would have the entire control. In point of

fact, the two corporations whose entire stock these promoters afterwards acquired, namely, Kearsarge and the Ossipee, were first organized by other parties. The nominal capital in each corporation was five hundred thousand dollars, divided into twenty thousand shares of twenty-five dollars each. The actual capital was much less, that of the Ossipee being one hundred and ten thousand dollars, and that of the Kearsarge ninety thousand dollars, making the cost of each share to the promoters, or those on the ground-floor, as they have been denominated in this case, in the one $4.50, and in the other $5.50.

577 Before the companies were organized, the promoters determined to sell stock on joint account, and in pursuance of this arrangement they did sell by the plaintiff, Frue, five thousand shares in the Kearsarge and two thousand in the Ossipee, realizing therefrom seventy-three thousand dollars. This sum was remitted to the defendant through Palmer, and it constitutes the basis of a portion of plaintiff's claim. He claims that this stock really belonged to himself and Palmer and the defendant Loring, and that his share in the proceeds is nine thousand two hundred and seventy-six dollars, for which the defendant must account and is liable in this action. There is no question, I believe, that if this stock really belonged to these three parties, the true share of the plaintiff in the proceeds is the above-mentioned sum, $9,276, and I instruct you that if you believe that this stock belonged to these parties, that the proceeds came to the hands of Mr. Loring, and that he has not accounted therefor to the plaintiff, the plaintiff is entitled to recover in this action said sum of $9,276; but if you believe that said stock belonged to the corporation, and that it was sold on account of the corporation, or that the proceeds were paid to Loring, as the financial agent of the corporation, to be expended for corporate purposes, then the plaintiff cannot recover any part of it in this action. If it was so paid and received, it was received for the use of the corporations, and not for the use of the plaintiff, and as this action is brought for moneys received by the defendant for the use of the plaintiff, it follows that the plaintiff cannot recover in this action. If it was so received by the defendant for the corporations, as their financial agent, the plaintiff, as a member of the corporations, may be interested in it, but he must look to the corporations, and not to the defendant personally. You are not to confound the defendant with the corporations. It seems to me a little strange that if the plaintiff considered himself as personally interested in this money, or rather that $9,276 of it was his, he did not retain it when it was in his hands, instead of sending it to Loring. He says he sent the money to Loring because he supposed he wanted funds, and he wished to keep him in funds. To keep him in funds for what? If to be used in developing the mines or the corporate uses, then the plaintiff cannot recover in this case, but if it was to be kept for the plaintiff, it may be recovered. It is proper for you to determine the question of fact here suggested, and accordingly as you find the fact

your verdict will be against or for the plaintiff in this action. Now, if it was deposited there, I say, as the financial agent of the corporations, to be used for corporate purposes, the plaintiff cannot recover in this action. On the other hand, if it was placed there on the general account of the plaintiff, and to be used by the defendant, Loring, with the other funds placed there by the plaintiff, then the plaintiff may be entitled to recover, depending upon other facts which will hereafter be presented to your consideration. And
578 even if you should think that the money was not paid to Loring as the financial agent of the corporations in the first instance, but as the financial agent of the very matters to be used by him in purchasing mining lands for the corporations, or exploring or developing the mines, and the remainder of it to be turned over to the corporations or to be held by himself as the financial agent to be used for like purposes, and that it was so used and applied, the plaintiff cannot recover any portion of it in this action. I mean to say he cannot recover unless it was received by the defendant for the use of the plaintiff, and not for the general promotion of the scheme. It is not material that the money was credited to Frue; this is a matter of mere book-keeping. When the stock was delivered to him to sell he of course was charged with it, and when he sold it and paid over the proceeds he was credited, not merely by the amount of his interest, but he was credited the whole sum of seventy-three thousand dollars. I suppose I am understood by the jury in this matter, but, lest I may not be, I repeat that if this seventy-three thousand dollars was realized from stock which belonged to the corporations, was stock reserved to the corporations, and not transferred or intended to be transferred to the promoters, and the money realized therefrom went to the corporations, then the plaintiff cannot recover in this action; or if the money was realized in anticipation of the formation of corporations, and it went into the hands of Mr. Loring as the financial agent of those promoters, to be used by him in exploring the lands and in paying for the lands, or in developing the lands, and it was so used, the plaintiff cannot recover in this action. If, on the other hand, it was paid over to Mr. Loring, and the portion of it which belonged to Mr. Frue was held by him on joint account for Mr. Frue, to be drawn on by Mr. Frue as any other money which he might deposit with him, then there may be a recovery in this action, depending upon the other facts which will hereafter be presented.

It is not disputed that the defendant received from the plaintiff, or from the plaintiff and his associates, Noble and Hodgsons, the further sum of forty-three thousand seven hundred and ninety-nine dollars and eighty-three cents. I do not say he received this sum for the use of the plaintiff, but only that he received it; in what character, or for what purpose, or for whose use he received it, is a question you must determine, as well as the further question, whether or not it was applied by the defendant to the use and purpose intended. The plaintiff insists that the whole of this money

was his, and that it was received by the defendant as plaintiff's money under an arrangement made through Palmer, that the defendant would purchase certain stocks therewith for the plaintiff, and transfer, or cause to be transferred, to the plaintiff said stocks; that if the defendant used the money in the purchase of stocks he purchased said stocks in his own name and for his own use, and he has accounted to the plaintiff for the stocks or otherwise for
579 only thirteen thousand six hundred and thirty-seven dollars and fifty cents, although stocks for the whole have been demanded of him.

Now, I instruct you that if the whole or any part of this money was the plaintiff's, no matter through whom he received it, and that it was received by the defendant under the arrangement suggested—that is, under the agreement that he would convert it into stocks for the plaintiff and transfer the stocks to the plaintiff, and he has failed, after demand, to so transfer said stocks, then to the extent that plaintiff's money has not been so used he may recover in this action. Counsel will perceive that I use the term "after demand." I am not at all sure that it was necessary to be used. It seems to be conceded that the stocks were demanded, and I put it in here. I do not know that it was necessary as a legal proposition. You will notice the instruction in these two propositions: 1st, the plaintiff cannot recover as to this sum, or any part of it, unless the whole or some part of it was his own; and that, in any event, his recovery must be limited to the part which belonged to him. If it belonged to him, Noble, and the Hodgsons, jointly—if it was their joint money—he cannot in this action, in which he sues alone, recover any part. If any part of it belonged to him separately, to that extent he may recover, provided the defendant received it, to be invested by him in stocks, which he had agreed to transfer, or cause to be transferred, to the plaintiff, and which he has not transferred. If it was a part of this agreement, when he received the plaintiff's money, or if he made this agreement while the money was in his hands, that he would not only invest the money in stocks, but that he would transfer the stocks to the plaintiff, I think the plaintiff may recover in this action, if the defendant has not performed his whole agreement. If he has simply invested plaintiff's money in stocks, and if he has not caused the stocks to be transferred to the plaintiff, he cannot rely upon his broken contract as a defence to the plaintiff's demand to have his money returned. He has in such case not used the money of the plaintiff as he agreed to use it, and, in contemplation of law, might still use it for the plaintiff, and must account for it in this action. But the defendant insists that none of this money belonged to the plaintiff, and that he had no interest in it, but that it was the joint money of the plaintiffs and Noble and the Hodgsons, and that the stock which was to be purchased, if in fact it was to be applied to the purchase of stock, was to be the joint stock of these parties. If you find that this was so, and if you find that the agreement of the defendant was to trans-

fer the stocks to these parties jointly, and not to the plaintiff alone, then the plaintiff cannot recover any part of this sum of $43,799.80; or if the money was furnished by the plaintiff, and the agreement with Loring was to transfer the stock to him, and Noble and the Hodgsons were to derive their interest from the plaintiff, then it presents no obstacle to the plaintiff's rights to recover; nor
580 does it matter that Noble and the Hodgsons agreed with the plaintiff to furnish him a portion of said money, or that he did actually furnish it. If they were entitled to receive no stock, jointly or separately, from the corporations or from Loring, if the arrangement between Noble and Hodgsons and the plaintiff was that the stock should be issued to the plaintiff, and the plaintiff had agreed with them—not merely intending to transfer to them certificates—but had even agreed to transfer to them certificates of stock, then I hold that it presents no obstacles to the plaintiff's right to recover. And no matter whether they had furnished him money to enable him to pay for the stock or not, it would be precisely the same as if he had furnished the whole money from his own interest.

And the defendant insists that as to the $2,000 part of $43,799.80, your verdict cannot, in any event, be for the plaintiff, because, as he maintains, this money was sent by Noble to Loring to pay for his (Noble's) stock, which was allotted, or to be allotted to him. If you find the fact to be so, then I instruct you plaintiff cannot recover this money; but, of course, if you find the fact to be otherwise—if you find that the money was the plaintiff's, forwarded to Loring by Noble only as plaintiff's clerk, and received by defendant as plaintiff's money, and credited to the plaintiff, then the plaintiff may recover, if you find the other facts to exist on which the right to recover depends, as I have before said; but if you find that the $2,000 was Noble's, forwarded to Loring to be applied to paying for stock to be allotted to him, or which he understood was to be allotted to him, I am inclined to think, and I so instruct you, that plaintiff cannot recover, even though it was placed to the credit of Frue. If it was Noble's money, it could not be placed to Frue's credit without Noble's consent; and the so placing of it would not make it Frue's unless Noble then or subsequently assented to it. I suppose that if it were Noble's money, and if it was forwarded to Mr. Loring, and he, having no account with Noble, had deposited the money with Mr. Frue's, and Noble had subsequently assented to this arrangement, then Mr. Frue might recover the money from Mr. Loring, although he might be obliged to account therefor to Mr. Noble.

Of course, I repeat, if it was Mr. Frue's money, there is no difficulty as to the right to recover this sum, if the plaintiff is entitled to recover anything in the action.

Defendant contends that the plaintiff cannot recover as to the $25,401.55 part of the $43,799.80, because he says the plaintiff sent this money to Mr. Palmer, to be used by him for a specific purpose, and not to be invested by Loring in stocks, or in anything else, for the plaintiff; that this money was never credited to Frue by Loring,

but credited to Palmer, and subsequently checked out and used by Palmer. If you find the facts to be so, then the plaintiff cannot recover this sum; but if you find that this money was actually
581 credited to Frue by Loring, and has not been accounted for by Loring to Frue, I do not see why Frue cannot recover it. It is perfectly competent for the plaintiff to change the destination of the money and to ratify the deposit to his credit if it was so deposited. As it was Frue's money, if it was placed to his credit with Loring, it does not lie in the mouth of the defendant to refuse to account for it; but I repeat that if it was sent to Palmer to be invested by him, was placed to Palmer's credit, not to Frue's, and was invested by Palmer, the plaintiff has no cause of action therefor; or even if it was placed to Frue's credit, and a portion of it was applied by Palmer, or Palmer and Loring, to the purchase of stocks in Torch Lake other than Frue has received, the plaintiff cannot recover the amount so invested, even though Frue has not received the stock purchased for him in Torch Lake. If the investment was made with his consent, or he subsequently ratified it, if the evidence satisfies you that Loring promised the plaintiff personally, or through Palmer, to invest the money from him, and to transfer stock purchased for the plaintiff to him, and he has failed to make the transfer — I mean this: there is some testimony to the effect, that when the moneys were sent forward, through Palmer to Loring, to be invested in the lands, stock, or whatever you may call them, connected with the Kearsarge or the Ossipee, that there was some agreement on the part of Loring to invest that money in these stocks, and to transfer the stocks to Mr. Frue, and I have told you that if you find any such agreement whilst the money was in his hands, he cannot discharge himself from that obligation by simply investing the money in stocks, but must perform his whole contract. He must either deliver over to Mr. Frue the stocks, or must account to him for the money.

But it is contended by the defendant that this agreement did not relate to the money which was forwarded to Palmer to be invested in Torch Lake, and that there is no evidence of any such agreement, and that in fact they insisted that this money was really invested by Mr. Palmer in something else, Torch Lake or something else— certainly to the extent of 5,600 shares of stock for Mr. Frue. Now although that was the original destination of the money, and though it was originally intended to be invested by Mr. Palmer for Mr. Frue in Torch Lake, if you shall arrive at the conclusion that it was not so invested, and that its destination was changed, that it was placed with Mr. Loring, and that it was mingled with the other funds of Mr. Frue, to be used by Loring, precisely as he was to use the other moneys which had been deposited with him, and that Loring came under the same obligation in respect to this money that he was under in respect to the other moneys; and if that obligation was to invest it in stocks, and to transfer those stocks to Mr. Frue,
582 and he has not done it, then he is liable for this money as well as for any other part of it; but if, on the other hand, he

came under no such agreement in respect to this money at all, if he made no such agreement with Mr. Frue, then I do not see that in this action, or any other, perhaps, he would be liable. I do not say there would be no remedy whatever, however.

Perhaps right here as well as anywhere else in the course of the charge, I shall admonish you that the term stocks may be very differently used by the uneducated from the sense in which it is used by the educated lawyer or the court. This witness may not have any definite idea of the meaning of the term as he employed it. The witnesses may not distinguish between the lands and other property which belonged to the corporation, and the stocks which belonged to the corporation. When a corporation is organized, as you perhaps know, whether it be for banking purposes or mining purposes, stock certificates are issued to the persons interested, generally in proportion to the amount of money that each pays in. Lands are all which are invested in the corporation; and tools, implements, and all other articles which are necessary to carry on a praticular business contemplated in the organization of the corporation. These are vested in the corporation, and the stockholders have no property or interest in them except through the corporation as members of the corporation. So long as the corporation exists they have no control over their property except as they act through the corporation and through the directors and managers of the corporation. But these various witnesses, let me here conclude, have said that these moneys were forwarded for the purpose of purchasing stocks or lands—they sometimes use the one expression and sometimes the other—and if your attention was called to the testimony of Mr. Frue in relation to the sending forward of $73,000, you would find that instead of saying it was sent forward for the purpose of purchasing stocks, that they were sent forward for the purpose of keeping Mr. Loring in funds. If you were to advert to what he says in relation to the transaction of the $25.408.48, you would see that it was not that it should be invested in stocks in Torch Lake, but to be invested in lands. In other words, I mean to say that he has not drawn that discrimination that commonly exists between the lands that belong to the corporation and the stocks. Counsel use these expressions with more discrimination, and they say that this money was forwarded to Mr. Loring to be invested in stocks, not in lands—I mean the counsel for the plaintiff. It is for you to determine whether that be so or not. If the money was sent to Mr. Loring, I repeat, to be invested in the stocks of the corporation, and he was to procure the stocks and to cause them to be transmitted to Mr. Frue, that is one thing;

583 on the other hand, if the moneys were sent to Mr. Loring, as the financial agent of the corporation, or the promoters, to be invested in lands thereafter to be conveyed to the corporation, or in developing the lands, that is another thing.

Again, the defendant insists that he never made a specific agreement. And now I wish to call your attention to this part of the

charge particularly, because I think here is the turning point of this case, and the jury may consider the facts. He insists that he neither made a specific agreement to purchase stocks for the plaintiff, nor caused any stocks to be transferred to him. That the arrangement was substantially this: that articles of associations were prepared for two mining companies; that neither of these companies had any mining location; that explorations were to be made, mining locations were to be contracted for; that the organizations of these enterprises were to be made by the plaintiff for Mr. Loring and perhaps others; that moneys were to be collected from the plaintiff and other promoters prior to the organization of the companies, and to be placed in the hands of Loring as the financial agent of the promoters, to be used by him in the exploration of mining lands, in the purchase of the same, and in the development of mines; and that if lands should be purchased, they should be transferred to the corporations thereafter to be organized; that if any of the moneys remained unexpended, they should likewise be transferred to the corporations or their treasurers; that it was contemplated that each of the promoters should receive from the corporation, stock proportionate to the amount of money which he had advanced; that all the money received by the defendant, Loring, was used for the purposes contemplated; that he never came to any specific agreement with the plaintiff to purchase or transfer to him stocks in the corporations which were to be organized; that it was the understanding that the plaintiff with the other promoters as aforesaid would be entitled to stock from the corporation; that if the plaintiff had any reason to expect that the defendant would transmit to him stock of the corporations, this arose from the fact that the plaintiff resided in the far West, and the defendant resided at or near the business office of the corporation and was their chief officer and manager. Now, if you find these facts to be so—if you find that the moneys advanced by the plaintiffs were received by the defendant as the financial agent of the promoters, to be used by him in the purchase of mining lands, or making explorations, and that they were so used, or any portion thereof, the plaintiff cannot recover in this action. The plaintiff's right to recovery rests entirely upon the theory that the money was to be paid to Loring individually, to be invested by him in stocks which were to be transferred to the plaintiff, but which money he did not so invest, or if he did so invest he failed to transfer the stocks. I repeat, that if the money was paid to Loring as the financial agent of the promoters, to be used by him in purchasing mining lands, and a portion was so used,
the amount was not ascertained here, plaintiff cannot recover
584 in this action, because in such case there would be a necessity
for an accounting, which must be had in another jurisdiction.
You have heard me say several times, that, upon certain contingencies, plaintiff cannot recover in this action. You will of course understand me as not meaning to intimate that he is without remedy If he has not received all that he is entitled to, he is entitled

to receive stocks from the corporations which were organized, or from Mr. Loring. He may have his action against one or the other, therefore, to recover his damages, or possibly he might proceed against one or the other by proceedings in equity to compel the issue or transfer of the stock. This would ordinarily be the remedy of a party who subscribed stock to a corporation and then failed to receive stock, nor would the plaintiff in such case suffer any loss, because in such action he would recover the actual value of the stock to which he was entitled, or by the proceedings in equity he would obtain the stock itself. In the form of the proceedings adopted it might occur that the plaintiff, if he recovered at all, would recover more or less than he should in good conscience receive. If the stock was of less value than the sum paid for it, or agreed to be paid for it, then in this form of action he might recover more than the actual damage sustained by him. On the other hand, if the stock had increased in value, then he would have the right to sue the party for not transferring the stock and might recover its actual value; but this is not at all to abridge the plaintiff's right of action. He has his election. If he placed his money with Loring to be invested in the stocks, and Mr. Loring agreed with him personally to invest the money in the stocks, and he has not performed that agreement by investing the money in the stocks, and transferring them to the plaintiff, the plaintiff either may recover in this form of action the money which he had advanced Loring less the amount which Loring has accounted for, or he might, if he had chosen, have sued Loring for the value of the stocks, and in that action, so far as has been developed in this case, I do not know whether the recovery would have been more or less than the plaintiff may possibly recover in this suit. That would depend upon circumstances and the facts.

I have presented the case perhaps a litle confusedly; but I think the jury will understand me. When I use the term "paid over to Mr. Loring individually," perhaps some explanation is necessary. He was not at the time some of these moneys were paid to him a member of any corporation. Therefore all the moneys received by him were received by him individually in a certain sense; but if he was selected by the promoters as the person to receive the money and to expend the money on behalf of the promoters prior to the organization of the company, and if he did expend the money thus received by him prior to the organization of the company, as the financial agent of the promoters, then that is the sense in which I should say he was not individually receiving the money; that is, I mean you to understand the term in that sense; and I mean
585 to say that if the moneys were so used by him, the amount not being fixed or ascertained in this action then the remedy of the plaintiff is in another form, in an action for an accounting. On the other hand, if he did not expend any of those moneys thus; if his obligation was simply to invest the money in the stocks of the corporation for the plaintiff,—have the stocks transferred to the

plaintiff, and he did not do this, he must account to the plaintiff for the moneys which were so placed with him for that purpose.

Now I will dispose of the specific requests which have been made by the parties.

[Mr. WELLS.] The requests of the plaintiffs are withdrawn. They are covered by the general charge.

[COURT.] The first request of the defendant has already been overruled.

2. If the jury find that the plaintiff and defendant, together with others, were jointly interested in the organization of certain mining corporations under the laws of this State, and that plaintiff, by an arrangement between all the original proprietors of said corporation, had allotted to him a certain number of shares of stock therein, upon the payment to the treasurer of said company of the actual costs thereof, and that plaintiff remitted to the defendant money for the purpose of paying in the treasury of said corporation the actual cost of said shares thus allotted to him, and which the defendant actually paid for that purpose, then plaintiff cannot recover in this action for the money thus remitted to the defendant and thus applied. That has already been given substantially to the jury.

3. If, in the anticipation of the actual organization of the corporation, money was sent from time to time by the plaintiff to the defendant to pay for stocks thus to be taken by the plaintiff in said corporations, and it was agreed between them that the defendant was to take the stock and hold it in trust for the plaintiff until the same was fully paid for, and the defendant paid into the treasury of said corporation the money thus sent to him,—plaintiff cannot recover in this action for the money thus sent and paid, although he he may not have received the stock.

I am not sure that there was any evidence that there was any agreement that the defendant might hold the stock in trust for the plaintiff, or as security even for moneys which were due from Frue to him. He treated the money which came through Palmer as Palmer's money, and it would seem that Palmer was behindhand, perhaps had not paid up in full—and what Loring was insisting upon was holding the whole stock of Frue and Palmer for advances. I therefore do not give that instruction.

4. If certain stock in such corporation was allotted to Noble as one of the original proprietors by actual arrangement between the parties, and said Noble sent money through Palmer to defend-
586 ant to apply on shares thus allotted to him, plaintiff cannot recover in this action.

I think that has been covered by the charge of the court as given.

If certain stock in the corporation was allotted to said Noble by the arrangement between the original proprietors, and he paid money over to said Frue to be remitted to the defendant to be

applied on the stock thus allotted to him, plaintiff cannot recover in this action.

I think that is all embraced in what I have said, as far as the court intends it to be embraced.

[Mr. WALKER.] Your honor submitted the question to the jury in that connection in your charge, as to whether that $2,000 was Frue's money or Noble's, I have to request your honor to say that there is no evidence that that $2,000 was Frue's money.

[THE COURT.] I do not think it will be any error for me to submit it to the jury. I am inclined to think that there is some evidence on which the jury may draw the inference—that is, on Frue's testimony. The jury may doubtless conclude that it is Noble's; but there is some testimony from Frue to show that Noble, in this capacity, simply acted as his clerk, forwarding the money.

6. That upon the evidence in this action plaintiff is not entitled to recover for the $2,000. That I declined to give.

7. That I have already charged.

8. If the drafts remitted by said Frue to C. H. Palmer, on the 31st of December, 1866, under instructions to purchase the property mentioned in said Frue's letter of that date, and said Palmer without authority paid such drafts, or the proceeds thereof, over to the defendant, and subsequently drew out of the same or any portion thereof from the defendant's hands, and applied it on the purchase of the property thus directed to be purchased, then the plaintiff cannot recover in this action. I think that is covered by what I have said. I decline to give it in any other form than that.

That upon the evidence in this case, plaintiff is not entitled to recover for any portion of the money sent by plaintiff to Palmer in letter of December 31st.

[Mr. WALKER.] Your honor has covered that fully.

[THE COURT.] The two written requests are declined. I think they are covered by what I have already said.

[Mr. WALKER.] I have two other requests that I desire to present:—If the jury believe the testimony of Mr. Palmer, that Mr. Frue furnished the money to purchase 5,600 shares of the Torch Lake property, and that the money was drawn from Loring, the defendant, then the costs of said shares is to be deducted from the money claimed by the plaintiff in this suit as against defendant, in addition to the other deductions admitted by the plaintiff.

[Mr. LOTHROP.] My friend stated something which Mr. Palmer did not testify to.

587 [The COURT.] I will only say in respect to that matter that if Mr. Palmer drew out the price of 5,600 shares and invested it in this stock for Mr. Frue, and the stock was issued to Mr. Frue, there would be an end of the matter of course. If, however, this money was invested just as though the money was to be invested if Mr. Loring came under the same obligation in respect

to this stock that it is alleged he came under in respect to the other stock, then I hold that the plaintiff has a right to recover.

[Mr. WALKER.] We claim that there is no evidence that it was held under any such agreement.

[The COURT.] But suppose the court thinks there is some to be submitted to the jury, what is your remedy? It cannot be in the way of an exception.

[Mr. LOTHROP.] The question is whether there is any evidence tending to show; and if there is any evidence tending to show, it must go to the jury.

[Mr. WALKER.] Your honor has referred, in your very lucid and able charge—which on the whole is very clear and satisfactory—to the fact that you submit to the jury the question of whether it was upon the same agreement.

[The COURT.] It is immaterial whether the agreement was to invest it in stocks or not. A simple deposit of money with Loring to the credit of Frue would entitle the plaintiff to an accounting.

The first and second written requests are refused. The third written request is as follows: That there is no evidence in this case that at the time the defendant received the money claimed in this case he made any agreement to deliver to the plaintiff any stock in said corporation.

I decline to give that to the jury for two reasons. I do not wish to express any opinion as to what the evidence establishes. I simply mean to say that there is evidence upon the subject which the jury may consider; and I further mean to say that, even though they should conclude that there was no agreement at the time the money was placed there, if there was such an agreement subsequently made while the money was in the hands of Loring, it is the same as if the agreement had been made when it was placed there.

I am asked to say to the jury that there is no evidence but what the defendant used the money put into his hands for the plaintiff for the very purpose for which it was forwarded. I decline to give that.

I am asked to charge that the statement filed with the Secretary of State in the summer of 1867 has no tendency to prove that the defendant wrongfully took in his own name stocks to which the plaintiff was entitled. I think I will give that. I do not see how the books will show. They will only establish that certain amount of stocks was issued to the defendant; they will not show that it was wrongfully done. It is a fact which the jury
588 may consider in connection with all the other facts. It will show how much was issued to the defendant, how much was issued to the plaintiff, and how much was issued to the other parties.

I said to you substantially, in relation to the money which was sent from Lake Superior to Mr. Loring, that if that money belonged to the parties at Lake Superior jointly, if it was to be

invested in stock for their joint use, then the plaintiff in this action cannot recover any part of it. If, however, it was Mr. Frue's money, although derived—a portion of it—from these parties, and the stock was to be taken out by him, and he was to transfer the stock, or a portion of it, to other parties, that would constitute no obstacle to a recovery. I also said that though all the money sent from Lake Superior did not belong to Mr. Frue, if any portion of it belonged to him separately from the rest, he is entitled to recover to the extent of that portion, provided, of course, that the jury can ascertain what that portion is. If you cannot ascertain what that portion is, of course you can give no verdict in his favor in that respect.

The defendant excepts to the refusal of the court to charge the jury as requested by him in the charges A and B; also in the original charges 1, 2, 2¼, 2½, 3, 6, 9, 10, and the additional charges 11, 12, and 13, as requested; also to the charge of the court upon the subject of jurisdiction; to the charge of the court that under certain contingencies plaintiff could recover for the portion of the $73,000 sent forward as proceeds of sales of stock; to so much of the charge as relates to the effect of Loring crediting the $2,000 sent forward November 8th to Frue; as to the effect of the credit by Loring to Frue of the remittance of December 31st, 1866, of the $25,000; as to the charge of the court which requires in certain contingency that Frue should have received the Torch Lake stock to discharge the defendant upon his liability; to the charge of the court which permits the jury to find that there was an agreement made by Loring with Frue as to the disposition of $25,000.

The following were the defendants' requests to charge:

1. That no verdict can be rendered for the plaintiff in this case, far the reason that the court have no jurisdictisn to try the same, the order setting aside the non-suit granted therein being without authority of law.

2. If the jury find that the plaintiff and the defendant, together with other persons, were jointly interested in the organization of certain mining corporations under the laws of this State;

And that the plaintiff, by an arrangement between all the original proprietors of said corporations, had allotted to him a certain number of shares of stock therein upon the payment into the treasury of said company of the actual cost thereof;

589 And that plaintiff remitted to the defendant money for the purpose of paying into the treasury of said corporation the actual cost of the shares thus allotted to him,—and which the defendant actually paid for that purpose.

Then the plaintiff cannot recover in this action for the money thus remitted to the defendant and thus applied.

2¼. There is no evidence in this case that at the time defendant received from the plaintiff the money claimed in this case, he made

any agreement to deliver to the plaintiff any of the stock in such corporations.

2½. There is no evidence but what the defendant used the money put into his hands from plaintiff for the very purpose for which it was forwarded.

3. That if, in the anticipation of the actual organization of such corporations, money was sent from time to time by the plaintiff to the defendant to pay for the stock thus to be taken by the plaintiff in said corporations; and it was understood between them that the defendant was to take said stock and hold it in trust for the plaintiff until the same was fully paid, and the plaintiff actually paid into the treasury of said corporations the money thus sent to him, the plaintiff cannot recover in this form of action for the money thus sent and paid, although he may not have received the stock.

4. If certain stock in said corporations was allotted to William R. Noble, as one of the original proprietors, by mutual arrangement between the parties, and said Noble sent money through C. H. Palmer to the defendant to be applied to the payment of shares thus allotted to him,—the plaintiff cannot recover in this action for the money thus remitted by said Noble.

5. That if certain stock in said corporation was allotted to said Noble by an arrangement between the original proprietors thereto, and he paid money over to said Frue to be remitted to the defendant, to be applied upon the stock thus allotted to said Noble,—the plaintiff cannot recover for the money remitted, in this action.

6. That upon the evidence in this case the plaintiff is not entitled to recover in this action for the two thousand dollars sent by Noble on the 8th of November, 1866, and paid to the defendant by Mr. Palmer.

7. If, by an arrangement between the original proprietors or stockholders of said corporation, certain shares thereof were allotted jointly to the plaintiff, to said Noble, and to David Hodgson and J. C. Hodgson, upon their payment therefor into the treasury of said corporation the cost of said stock as aforesaid, and the said Frue remitted the money to pay for said stock for himself, the said Noble, and the said Hodgsons, to the defendant,—then the plaintiff cannot recover for such moneys sent for all said joint parties, in this action.

590 8. If said shares were allotted to said Frue, said Noble, and said Hodgsons, and the said Noble and the said Hodgsons paid money into Frue's hands to be sent forward to be applied in the payment of said stock, and Frue sent said money to the defendant for that purpose,—then the plaintiff cannot recover in this action for the money thus paid to said Frue and thus remitted, even though defendant has never accounted therefor.

8½. And this would be so whether allotment was several to each or jointly to all.

9. If the drafts remitted by said Frue to C. H. Palmer, on the 31st of December, 1866, under instructions to purchase the property

mentioned in said Frue's letter of that date, and said Palmer, without authority, paid said drafts or the proceeds thereof over to said defendant, and subsequently drew out the same, or any portion thereof, from the defendant's hands, and applied it upon the purchase of the property thus directed to be purchased, or a part thereof,—then the plaintiff cannot recover in this action for said money so forwarded and paid out.

10. That upon the evidence in this case the plaintiff is not entitled to recover for any portion of the money sent by the plaintiff to Palmer in said letter of December 31st.

11. If the jury believe the testimony of Mr. Palmer, that Mr. Frue furnished the money to purchase 5,600 shares of the Torch Lake property, and that that money was drawn from Mr. Loring, the defendant, then the cost of said shares is to be deducted from the money claimed by the plaintiff in this suit as against the defendant, in addition to the other deductions admitted by the plaintiff.

12. There is no evidence that $2,000 remitted by Noble to Palmer, on the 8th of November, belonged to Frue.

13. No evidence of any agreement of Loring to hold the $25,000 for Frue upon general account, or in the same way in which the other moneys were sent for the Kearsarge, Ossipee, and Iroquois.

14. If the jury find that it was agreed between the original proprietors or stockholders of said corporation that two thousand shares of the stock of said corporation, costing five dollars and fifty cents each, should be sold upon the joint account of said proprietors at an advance upon the cost thereof, each stockholder contributing his proportion of stock sold, and said Frue actually sold the same and received the money therefor and remitted the proceeds of such sale to the defendant,—then the plaintiff cannot recover from the defendant such moneys, or any portion thereof, in this action, they having been paid and received on joint account of the plaintiff, the defendant, and other parties.

REQUEST A. All the facts in regard to the *purpose of the transmission of the money* by the plaintiff to the defendant,
591 through Palmer, rest on the testimony of Palmer and the plaintiff, and there is no testimony on the part of the defendant on the subject. The facts are therefore not in controversy, so far as this point is concerned. This undisputed testimony shows that articles of association were prepared for two mining companies; that neither of these companies had any mining location; that explorations were to be had, and mining locations were to be contracted for, and that it was designed by plaintiff, defendant, and the witness, Palmer (with other promoters of the two corporations) that the money transmitted by plaintiff should be applied by defendant for corporate purposes, including payments for the explorations and the mining locations upon which the corporations were to be set up, and *in order* that they might be set up. It was also designed by plaintiff that the defendant should procure stock in these two corporations, to be issued to said plaintiff *after said corporations should*

*have been set up on these lands*, the cost price of which stock should be equal to the sum of money transmitted.

The defendant *did* apply the transmitted money for corporate purposes, including payment for the explorations, etc., and mining locations, and the latter were deeded to the two corporations, and the defendant thereafter procured the issue of the agreed amount of stock and a portion was delivered to and accepted by the plaintiff; but defendant departed from his instructions in this, that another portion of the stock was issued to himself, as trustee, and not to the plaintiff; and there is no evidence that defendant has converted this stock into money. It was not possible, and therefore it was not the intention of the parties, that the money transmitted should be exchanged directly for the stocks (*by way of purchase*), because the companies were not in existence when the money was transmitted.

I therefore instruct the jury that the money was applied as agreed; that the plaintiffs acceptance of *part* of the stock was a *ratification* of the application of the money, *and that the money transmitted cannot be recovered back in this form of action, the remedy of the plaintiff being by an action for compensation in damages to the value of the stock.*

REQUEST B. It is the province of the court to construe the contract of parties, verbal as well as written. No dispute exists here as to the facts and circumstances raising the contract sued on. No contract can be inferred from the uncontradicted facts, which will justify a recovery in this form of action."

It is admitted that above Exhibits 128, 129, 130, 132, 133, and 134 were produced by Wm. B. Frue, and introduced in evi-
592 dence on the trial of his suit against defendant Loring in 1874, and were marked on that trial as Exhibits, as follows, viz: 128 as "I;" 129 as "A;" 130 as "N;" 132 as "G;" 133 as "E," and 134 as "M," and that 133 was introduced in evidence on the trial of said suit in 1877, and was Exhibit "A—1" on that trial.

It is further admitted that the letter of Mr. Chadbourne, dated April 2, 1881, be admitted as testimony, and his statements given same effects as though made under oath, subject, however, to all objections that might be taken to them as immaterial, irrelevant, and incompetent.

The following is the letter of T. L. Chadbourne, as above referred to:

DETROIT, MICH., *April* 2, 1881.

S. F. SEAGER, *Lansing, Mich.*

DEAR SIR: The Atlantic Mining Company has a capital stock of 40,000 shares.

I have been familiar with the market value of the stock for a number of years,

In the winter of 1879–80 it was for several weeks above par, which is $25 per share, and some sales were made at $30. It is now only some $14 or $15 per share.

(Signed) T. L. CHADBOURNE.

Counsel for complainant introduces in evidence the testimony of Wm. B. Frue, taken on the trial of the case of Frue *vs.* Loring, in 1874, as follows:

"Q. What statement did you demand?

A. I was wanting a statement of moneys received and the cost of my interest in the lands of the companies—the Ossipee, Kearsarge, Iroquois, and Torch Lake, if any.

Q. Did you make any demand in respect to delivering your stock?

A. I had made that demand at the house.

Q. While he was there?

A. While he was there.

Q. Demand it more than once.

A. I demanded the stock at three different times from Mr. Loring. I demanded the stock from him in 1868. I demanded it in 1867, and also demanded it in 1869."

593 Counsel for complainant also introduces in evidence the testimony of said Frue taken on said trial, as follows:

"Q. Don't state the contents of any letter. I ask this question, which I omitted in the examination-in-chief: Was that account rendered to you by Loring.

A. I cannot state how this came into my possession, but I believe it was passed to me by Charles H. Palmer.

Q. Whose handwriting is it?

A. I won't swear. The signature here I should say resembled Mr. Loring's very much.

Exhibit N, headed 'Stock account of C. H. Palmer and friends in O. K. and I. Mining Companies,' is offered in evidence and the signature admitted to be Loring's."

Counsel for complainant introduces in evidence the testimony of W. B. Frue, taken on trial of said cause of Frue *vs.* Loring, in 1877, as follows:

"Q. How much stock did you sell in the Ossipee Mining Company to outsiders?

A. 2,000 shares.

Q. And how much in the Kearsarge?

A. 5,000.

Q. At what price in each?

A. The stock in the Kearsarge was sold for $10 per share.

Q. That makes how much?

A. That would make fifty thousand dollars.

Q. How much in the Ossipee?

A. It was sold for ten dollars a share, but before that I delivered this stock to parties, I was notified of an extra thirty thousand that had to be raised for the purchase of lands for the Ossipee Mining Company.

Q. How much did you sell it for, finally?

A. $11.50.

Q. How much was the total amount sold?

A. It is seventy-three thousand dollars.

Q. Who sent you that stock you sold and delivered?

A. Mr. Loring must have sent it; he is president of the company, and I had to account to Mr. Loring for this stock; and I ordered the stock and it was sent. I was not present in Boston, and I did not see him mail the stock to me.

Q. Did you receive the seventy-three thousand dollars that you have spoken of?

A. Did I receive it?

Q. Did you receive the money. Did they pay you for the stock that you sold?

594 A. Not all of it; I accounted for the seventy-three thousand dollars.

Q. Whether you did or not, did you send forward the seventy-three thousand dollars?

A. I sent forward the seventy-three thousand dollars. I ought to give an explanation. They are parties who had purchased before the company was organized, three hundred shares.

Mr. LOTHROP. I do not think the title is of any consequence.

Mr. WELLS. That is of no consequence, if you accounted to Mr. Loring for these moneys.

A. I accounted to Loring.

Q. Whose stock was this that was sold?

A. It was stock belonging to the original promoters.

Q. Then why did you send forward all moneys to Mr. Loring?

A. I sent them forward because I wanted to keep him in ample funds.

Q. What proportion of these moneys did you send forward belonging to you, as proceeds of the sale of stock?

A. There is my stock in the Kearsarge; there is only 1,050 shares sold, and I was entitled to a draw-back on that. There was in the Ossipee 580 odd shares, I have forgotten the amount.

Q. Of the stock that was sold what proportion belonged to you?

A. I have stated, in the Kearsarge 1,050 shares; it is impossible to remember all these figures without referring to notes. I cannot make a perfect ledger of my head.

Q. Well, sir, you can refer to notes.

A. You want the amount?

Mr. WALKER. What are you reading from?

A. Minutes.

Q. Minutes made when?

A. This was put on to paper last evening. I supposed I would

be asked the question, and I could not retain the figures in my mind, that is, I had to commit them on paper.

Q. Who made the memorandum?

A. It is made by Mr. Noble, and I figured out a part of it myself, to be sure.

The COURT. The stock forwarded by you to Loring belonged to the promoters in Houghton?

A. Yes, I have the figures here now.

Mr. RUSSELL. We would like to look at the paper before he testifies.

(The paper is handed to the defendant's counsel.)

Mr. WELLS. Q. How many shares of Ossipee, of the sale of stock, were you entitled to have the proceeds of?

A. Five hundred and eighty-three and a half shares.

Q. Why?

A. Because there were 2,000 shares sold, and it was one-tenth of the whole stock sold.

595 Q. What is one-tenth of your interest?

A. One-tenth of the amount of stock sold was 583 and one-half shares.

The COURT. I do not think we will take up time in giving the conclusions of the witness.

Q. How much stock was sold in the Kearsarge?

A. One-quarter of the whole stock sold.

Q. What was one-quarter of your interest?

A. One-quarter was 1,050 shares.

Q. Was any stock besides what was sold disposed of otherwise by the original promoters?

A. Yes.

Q. How much?

A. There were 400 shares donated in the Ossipee.

Q. What do you mean?

A. Given away—made presents of.

Q. To whom?

A. Persons on Lake Superior.

Q. What proportion of donated stock were you chargeable with?

A. I charged myself with 117 shares.

Q. Was any stock donated in the Ossipee?

A. I am now speaking of the Ossipee.

Q. In the Kearsarge?

A. Yes.

Q. How much?

A. 200 shares.

Q. What proportion of yours?

A. 42 shares.

Q. Was this donated stock all sent to you and delivered by you to persons entitled to it?

A. There were two hundred shares of donated stock?

Q. In what?

A. In the Ossipee. That I surrendered to the parties to whom it was donated, out of my own stock; that is, I had used my own stock for that purpose to clear off the liability of parties.

Q. So that you paid all the donated stock in that company?

A. No; there were 200 shares delivered to me afterwards by Mr. Palmer; 400 was the amount.

Q. How much stock to which you were entitled in the Ossipee Company have you actually received from Loring?

A. In the stock sold, donated, and delivered, there were 1,001 and a half shares.

Q. No, I mean how much stock ought to be credited to Loring on the stock that he delivered to you?

A. I credited Loring with a thousand and one and a half shares.

Q. In which company?

A. In the Ossipee.

596 Q. How much in all did you credit Loring within the Kearsarge?

A. 3,103 shares.

Q. Of the moneys which you claim to have paid Loring in this transaction, were any applied to any other companies than the Kearsarge and Ossippee.

A. Yes, sir.

Q. State what.

A. There was (refers to memorandum) there was money paid on the Iroquois, on the mines comprising the north half of section 6, and the 80 in section 1.

Q. How much money?

A. Ten thousand dollars.

Q. In what proportion were these parties to contribute?

A. Ten thousand; that would be fifty cents per share—20,000 shares.

Q. Was the Iroquois transaction carried on?

A. No.

Q. What became of the 10,000 you paid?

A. It was lost; that is, forfeited as it were.

Q. This ten thousand dollars paid on the land; and then you forfeited it?

A. Yes, sir.

Q. Why was it forfeited?

A. Because the contract with the Mineral Land Company—

Mr. WALKER. It is not necessary to go into that.

Mr. WELLS. You concluded not to pay the balance?

Q. Yes.

Q. How much do you concede to Loring should be your part of that?

A. $2,100.

Q. Why?

A. Because I was to have 4,200 shares of stock."

Counsel for the complainant also introduces in evidence the testimony of Charles H. Palmer, taken on the trial of the case of Frue *vs.* Loring, in 1877, as follows:

"Q. Mr. Walker. Let me call your attention to another part of your testimony: Q. Are you able to say that Mr. Loring opened that letter—referring to the $25,000 remittance of Dec. 31—opened that letter at all; that you did not receive it in the original letter in which Frue sent it?

A. I would not say, but I would say this: I know that he did open some of them. I know that because I recollect it; I would not say that he did open all of them, for they might come in the original envelope.

Q. So that you cannot say but what the $21,000 passed directly from you to Loring?

A. I stated that I thought not, but I would not be positive with that particularly. I know that some were.

Q. You know that they did come to you unendorsed?

A. Most certainly; they could not come otherwise.

Q. The negotiations for that land were all made by you in New York, and with Loring in Boston?

597 A. The negotiation for that land was decided upon by those interested in the original company.

Q. I mean you were the acting negotiator on the part of the associates?

A. I was made the acting man on the part of the parties who had been concerned.

Q. You also applied $4,500 of that money directly to the purchase of the Torch Lake interest, did you not?

A. I did, sir.

Q. That is, for the Torch Lake stock?

A. Yes, sir; there is a memorandum to that effect. Those drafts had to be drafts on parties in New York.

Q. Was it or was it not a residue of the $25,000?

A. No, sir, not at all; it was after the other transactions, some time.

Q. That $4,500 never went into the hands of Loring?

A. Unless he sent it to him in the way I have mentioned.

Q. It never went into his hands in such a way that he could use it?

A. The purchase was one——

Q. That is not my question; did that $4,500, as it came from Frue, go into the hands of Loring, so he could use it?

A. Of course it did not.

[Q.] Did you so testify?"

A. I did, but it was not the fact, as I find, it was not the fact; I was mistaken.

Q. You have had a very long consultation with your counsel——

Objected to.

A. I have a memorandum of Mr. Loring here in my hands. I have the memorandum of every amount I gave to Sibley. As I have stated here, I did not use a dollar. I have Mr. Loring's memorandum here in my hands; and, furthermore, all of these letters came to Mr. Loring; and as to the $25,000, I find that I was not in New York. I find Mr. Loring's endorsement upon the letter, and I find——

Q. Where is that letter?

A. That letter of the 31st, you will find here. I find that I was in Boston, and that Mr. Loring gave me the money to go to New York to give to Mr. Sibley.

Q. How did you find that out?

Q. I found it by the letter.

Q. Then you were mistaken in your former testimony on all these points?

A. I say Mr. Sibley did all this business, and it entirely escaped my mind at the time."

Complainant's counsel also introduces in evidence the testimony of Charles H. Palmer, taken on the trial of Frue *vs.* Loring, in 1877, as follows:

"Q. Mr. WALKER. In relation to this last point, let me call your attention to what you testified to on the former trial: Q. I believe you remarked that you were in New York in the winter of 1866 and 1867 a good deal?

A. Yes, sir; that is, I was there frequently and spent a week or two sometimes at a time.

Q. In the winter of 1866 and 1867, did you not in New York make purchases of lands, and purchases of Torch Lake stock also in which land and in which stock Mr. Frue had a share?

A. I did, in which all the parties which have been spoken of here had an interest.

Q. Are you able to state, with some approach to definiteness, how much money you spent in those purchases?

A. The land which was bought for the Ossipee, cost $25,000, and the Torch Lake stock, with the land and property connected with it—I am not able to tell the amount purchased—must
598 have amounted to $20,000 or more.

Q. That included the stock, too?

A. No; the land connected with it was the adjoining land. The land was purchased through Mr. Sibley. Sibley had a part, Hall a part, Hoyt a part, Boston parties having a part, and myself and Capt. Frue a part. It was purchased in certain proportions which would have been established through this transaction.

Q. What was the cost of the Torch Lake property?

A. I do not pretend to state the cost of all these purchases, because all these parties were numerous. At the time, I knew.

Q. You state as nearly as you can recollect?

A. I think I understate it, perhaps considerably, when I say $200,000.

Q. What funds did you employ to pay that?

A. The funds that I employed to pay that, was, say $4,500 that came directly from Capt. Frue, as I think. Loring sent the letters containing the remittances, and the balauce was funds I obtained from Loring of these general funds; that is, I did not keep any account of that. I say there were connections made in Boston, and they took a portion of this purchase, and the amount for balances drawn on Loring at the same time, and to make these purchases. Did you so testify?

A. I did.

Q. Is that wrong or right?

A. I think there would be an entire misapprehension from that testimony.

Q. Is it true or false?

A. It is incorrect, because it is insufficiently accurate; it is too general. I will explain, shortly, if you prefer.

Q. You can explain now, and then I have some other matters.

A. The money that was drawn from Mr. Loring for the Torch Lake stock was money that parties in Boston had paid to Mr. Loring, and moneys sent from the Lake. That was all settled with these parties.

The COURT. I don't understand what you mean by the Boston parties furnishing the pay. How can you say it was paid by the Boston parties if it was mixed with the general funds?

A. J. W. Clark furnished Mr. Loring money for 500 shares in Torch Lake. Of the drafts that I passed to Mr. Sibley, J. W. Clark furnished the money for 500 shares, Mr. Bigelow 1,000 shares, J. H. Cotton 1,000 and odd shares, Mr. Brigham 1,000 and odd shares, Mr. Loring 3,000 shares, Mr. Frue 2,600 shares, Mr. Frue 3,000 shares.

Q. Making 5,600 for Mr. Frue?

A. The amount of $20.000 of money which was furnished for this particular purchase, there were other parties that received from Mr. Loring, and I have not their names.

Q. The amount invested by Mr. Frue was drawn from moneys you paid into Mr. Loring's hands for Frue?

A. Mr. Loring attended to that; I don't know now what portions he used.

Q. Frue's shares were drawn from Mr. Loring?

A. Mr. Loring arranged Frue's shares; I had nothing to do with it.

599 Q. You drew on Mr. Loring for Frue's shares as well as for others?

A. I drew the money without any designation. That was between Loring and Sibley.

Q. But Mr. Frue was interested to that extent?

A. Yes, sir.

Q. But I thought you had nothing to do with the purchase; how is that?

A. I had as much to do in the counsel as any one. When I said I had nothing to do, I meant the actual labor, the actual purchase.

Q. Had nothing to do with the negotiation between the parties?

A. Nothing between the parties.

Mr. WELLS: Q. Do you mean the parties in New York?

A. I mean the parties in New York. It is barely possible that I may have seen some particular one, but generally I kept out."

The counsel for complainant also introduces in evidence the testimony of William B. Frue, taken in the trial of said cause of Frue *vs.* Loring, in 1877, as follows:

"*William B. Frue, plaintiff, re-called in his own behalf.*"

"Q. Has Mr. Loring furnished you any stock in Torch Lake or upon sections 35 or 36?

A. He has furnished me no stock in Torch Lake or Penn.

Q. On 35 or 36?

A. That included 35 and 36; 35 and 36 comprises the Torch Lake and Penn.

Q. Has he ever accounted to you for any of the funds which he claimed to have invested for you in these stocks?

A. He has not accounted to me for any of the funds in these stocks.

Q. What was the Torch Lake or Penn, was it an existing corporation?

A. The stock—I cannot state, I don't know that it was; I have reason to believe that it was. I could not swear positively that it was, because I do not know; I would state that I believe that it was in existence.

Q. I will ask this question of you, Captain: Was Torch Lake, Penn—section 35 and 36—and section 24, wholly different from the Ossipee and Kearsarge?

A. Wholly different.

Q. Other property?

A. Entirely so; 24 was a section of land belonging—

Mr. WALKER. No matter about any description.

Q. Where was the interest in these various properties last mentioned held?

600 A. I don't know as I understand.

Q. Who owned them before they were purchased by Sibley?

A. They were principally owned in New York and Providence, Rhode Island."

The counsel for the defendant Loring introduces in evidence testimony of Charles H. Palmer, taken on the trial of said cause of Frue *vs.* Loring, in 1877, as follows:

"Q. Mr. WALKER. Is that your letter of February 14th, 1867? (Shows a letter to witness.)

A. Yes, sir.

Q. You drew there and gave notice to Mr. Loring of a draft of $3,200?

A. Yes, sir. That was done for Mr. Sibley. You understand that Mr. Sibley did the work. I saw Mr. Sibley, but I kept out of sight.

Q. You had nothing to do with the negotiation?

A. I mean with the parties who sold Sibley.

Q. Mr. WELLS. Why did you keep out of sight?

A. If I had gone into the market, they would have supposed that I knew of something that was transpiring on the Lake and these lands that would make them valuable, and I would not have got any of it. It was so with the Douglass purchase; I was not known in it all.

Q. Mr. WALKER. Look at that paper, and see if that is your letter of February 27th?

A. Yes, sir.

Q. Is that your letter of February 28th, in which you speak of purchase made and draft drawn?

A. Yes, sir; this is mine.

Q. There is one of February 26th, in which you say you expect to get all of the south half of 35 and 36; is that yours?

A. Yes, sir.

Q. Then you did have something to do with the purchase?

A. I believe I stated, I spoke of it because I was one of the parties.

Q. And you drew the drafts to pay them?

A. Yes, sir. On Mr. Loring in favor of Mr. Sibley,—Sibley doing this work.

Q. Mr. WELLS. To whom did you deliver the drafts drawn?

A. To Mr. Sibley."

601 And afterwards, to wit, on the 17th day of April, A. D. 1882, the report of Special Master Herschel Whitaker was filed in the office of the clerk of this court; which report was in the words and figures following, to wit:

In the Circuit Court of the United States for the Eastern District of Michigan. In Equity.

CHARLES H. PALMER, Complainant,

*vs.*

ELISHA T. LORING and CHARLES A. WELCH, Defendants.

The undersigned, Herschel Whitaker, to whom as special master said cause was by decree heretofore entered therein duly referred to take proofs and to take and state an account between said complainant and said defendant Loring, hereby makes return and reports his doings under said reference as follows, to wit:

I was attended by the solicitors for the respective parties from time to time as suited their convenience; sworn accounts and

amended accounts of the said parties have been submitted to and filed with me, and said parties and such witnesses as either of them desired to produce have been sworn and examined and cross-examined before me, and their testimony taken down in writing, and the same together with said accounts, has been printed, and a printed copy thereof is herewith returned and filed.

602 As to the items concerning which alone there is now any controversy, I hold and find as follows:

I.

I have omitted from the account the following items, as I do not think the complainant can properly be charged therewith, viz:

| | | |
|---|---|---|
| 1867, March 23, To paid H. Bigelow, to bal. acc't. with C. H. P. | $96 | 99 |
| 1868, Feb'y 29, To paid S. & W. for legal services | 6 | 00 |

II.

Certain items specified on page 259, of the printed record, amounting in the aggregate to one hundred and sixty-six dollars and twenty-six cents, I find are for disbursements incurred in relation to transactions in which both complainant and defendant Loring were interested; as the amount is small, and it is difficult to determine the exact proportion of the outlay to be borne by each, I have deemed it equitable to divide the same between them equally; and I therefore find the complainant liable for one half thereof, and have so charged him in gross the sum of eighty-three dollars and thirteen cents, under date of, say January 1st, 1867.

III.

That complainant is chargeable with the following items, viz:

| | | |
|---|---|---|
| 1867. | | |
| Feb. 1, To 2,595 shs. Ossipee allotted C. H. P. & Son | $12,452 | 50 |
| Feb. 1, To 200 shs. Ossipee, loaned to C. H. P | 966 | 67 |

603

| | | |
|---|---|---|
| 1866. | | |
| Nov. 1, To asst. on 250 shs. S. Pewabic stock | 750 | 00 |
| 1867. | | |
| Aug. 6, To asst. on 250 shs. S. Pewabic stock and interest | 1,259 | 79 |
| Sep. 19, To asst. 1,420 shs. Adams stock | 2,912 | 90 |
| Nov. 8, To asst. on 250 shs. S. Pewabic stock | 757 | 88 |
| Nov. 18, To asst. on 250 shs. S. Pewabic stock | 1,000 | 00 |
| Dec. 17, To asst. on 1,420 shs. Adams stock | 4,315 | 50 |
| 1868. | | |
| Sep. 28, To asst. on 250 shs. S. Pewabic stock | 756 | 28 |
| 1869. | | |
| Mch. 31, To asst. on 1,420 shs. Adams stock | 1,424 | 14 |

| | | |
|---|---|---|
| 1867. | | |
| Feb. 1, | To 1,000 shs. Torch Lake stock | $1,500 00 |
| Feb. 1, | To 3,500 shs. Sec. 35 and 36 | 4,375 00 |

CR.

| | | | |
|---|---|---|---|
| 1872. | | | |
| Mch. 15, | By cash from sale 2,595 shs. Ossipee stock at $5 | $12,975 00 | |
| July 16, | By cash from sale 1,420 shs. of Adams stock at $1.66 | 2,366 67 | |

IV.

That complainant is entitled to a credit of $1,750, being the amount received by Loring upon the sale of 3,500 shs. "south half" of Secs. 35 and 36, allotted to Palmer.

V.

That in making up the account, after the Court shall have determined what items shall finally remain in the account, the complainant should be charged with discounts only when they were rendered necessary by the state of his account.

604

VI.

That complainant is not entitled to the credits for the items of cash received from W. B. Frue, specified on p. 259 of the printed record, to wit:

| | | |
|---|---|---|
| 1867. | | |
| Feb. 1, | To the item for the bal. in the land account so called, "Pass to credit of W. B. Frue's acct." | $5,669 97 |
| 1868. | | |
| July 25, | To cash from W. B. Frue | 2,500 00 |
| Oct. 31, | To cash from W. B. Frue | 5,004 35 |

VII.

That complainant is not chargeable with the cost of Torch Lake and "south half" of Secs. 35 and 36, allotted to Wm. B. Frue, viz:

| | | |
|---|---|---|
| 1867. | | |
| Feb. 1, | To 2,600 shs. Torch Lake stock at $1.50 | $3,900 00 |
| Feb. 1, | To 3,000 shs. Secs. 35 and 36, at $1.25 | 3,750 00 |
| 1872. | | |
| Apr. 20, | To asst. on 2,600 shs. T. L., at $0.75 | 1,950 00 |
| 1879. | | |
| Apr. 15, | To asst. on 2,600 shs. T. L., at $0.20 | 520 00 |

The main items in controversy depend upon law questions. As to those questions no argument was had before me, it being agreed by counsel that I should find and state the items of the account *pro forma* merely for the purpose of bringing said law questions before the court.

As the balance finally will be largely affected by interest, and as there are a large number of items upon which to compute interest, so that the work of computation is considerable, and would be, if made now, utterly wasted, should the court change the status
605 of any considerable number of items in said statement of account, I have not computed any interest or struck any balance.

As to the manner of computing interest, the solicitors for both parties concede that it may be computed with annual rests.

I append hereto a statement of the items of said account debit and credit, which is marked "*Schedule A*," and is made up as hereinbefore stated.

HERSCHEL WHITAKER,
*Special Master.*

606 SCHEDULE A.

CHARLES H. PALMER, IN ACCOUNT WITH ELISHA T. LORING.

| 1865. | | Dr. | |
|---|---|---|---|
| Oct. | 3, | To amount remitted R. H. Rickard, per order | $1,500 00 |
| | 24, | paid E. D. Brigham, S. W. stock | 2,420 00 |
| | 27, | " draft favor of G. H. Sanford | 2,000 00 |
| Nov. | 14, | " draft W. B. Frue, favor J. Senter | 450 00 |
| | 28, | " draft W. B. Frue, favor J. Senter | 600 00 |
| 1866. | | | |
| Jan. | 12, | transfer to account W. B. Frue | 2,535 75 |
| Mar. | 9, | draft favor J. N. & Co., $150; cash, $100 | 250 00 |
| May | 18, | paid his note | 2,500 00 |
| | 18, | " Tilton on his account | 3,600 00 |
| Aug. | 18, | " favor N. B. H | 200 00 |
| Sept. | 1, | " " J. B. Ross | 150 00 |
| | 4, | " L. Bird note | 5,000 00 |
| | 27, | cash | 100 00 |
| Nov. | 1, | assessment 250 shares S. Pewabic stock | 750 00 |
| | 1, | cash paid 100 shares Hecla stock | 6,000 00 |
| | 17, | paid his note at bank | 2,500 00 |
| 1867. | | | |
| Jan. | 1, | half telegraph and exp. items, amounting to $166.26 | 83 13 |
| Feb. | 19, | cash, $225; 21st, $100; 25th, cash, $700 | 1,025 00 |
| Mar. | 4, | $200; cash, $140 | 340 00 |
| Apl. | 1, | assessment on 100 shares Hecla stock | 300 00 |
| | 3, | assessment on Smelting Works stock | 1,086 00 |
| May | 7, | $50; 17th, cash, $22 | 72 00 |
| | 20, | cash | 150 00 |
| June | 25, | draft favor J. Chasel, $100; 29th, cash, $100 | 200 00 |
| July | 15, | cash, assessment 100 shares Hecla stock | 500 00 |
| Aug. | 6, | assessment 250 shares S. Pewabic stock and int. | 1,259 79 |
| | 9, | renewal notes at bank | 350 00 |
| | 27, | paid draft in his favor | 200 00 |
| Sept. | 19, | cash, paid assessment on 1,420 shares Adams stock | 2,912 90 |
| Nov. | 8, | assessment on 250 shares S. Pewabic stock | 757 88 |
| | 18, | assessment on 250 shares S. Pewabic stock | 1,000 00 |
| 607 | | | |
| Nov. | 20, | draft favor Mrs. Palmer | 300 00 |
| | 21, | assessment on 100 shares Hecla stock | 1,005 00 |
| | 27, | draft favor Mrs. Palmer | 100 00 |
| Dec. | 10, | draft favor Mrs. Palmer | 300 00 |
| | 17, | assessment on 1,420 shares Adams stock | 4,315 50 |

| | | | |
|---|---|---|---|
| 1868. | | | |
| Jan. | 4, | To cash paid for stamps | $2 50 |
| | 21, | assessment on Hecla stock | 400 00 |
| Feb. | 11, | renewing note at bank | 405 00 |
| | 17, | C. H. P | 100 00 |
| | 26, | draft favor A. H. Sibley | 250 00 |
| | 29, | renewal note | 180 42 |
| Mar. | 7, | renewal note and stamp | 205 83 |
| | 19, | his note | 5,000 00 |
| Apl. | 15, | paid stock D. & L. S. Copper Co | 2,925 00 |
| | 18, | paid draft favor of Revere House | 171 61 |
| | | cash paid his note | 5,000 00 |
| | 25, | " | 5,000 00 |
| May | 1, | Weed File Co | 211 47 |
| | 4, | draft Revere House | 200 00 |
| June | 13, | Weed File Co | 211 47 |
| Aug. | 14, | his note | 5,000 00 |
| | | " | 5,000 00 |
| | 22, | " | 5,000 00 |
| | 27, | " | 5,000 00 |
| | 31, | " | 5,000 00 |
| Sept. | 1, | " | 5,000 00 |
| | 12, | " | 5,000 00 |
| | 28, | ass't 250 shares S. Pewabic stock | 756 28 |
| Nov. | 20, | draft favor S. M | 1,200 00 |
| Dec. | 16, | his note | 5,000 00 |
| | 19, | " | 5,000 00 |
| 1869. | | | |
| Jan. | 6, | " at bank | 5,000 00 |
| | 15, | " " | 5,000 00 |
| Feb. | 17, | renewing his note | 200 00 |
| | 20, | his note at bank | 5,000 00 |
| March | 3, | " " | 5,000 00 |
| | 20, | for sale of Hecla stock | 25 80 |
| | 31, | paid ass't on Adams stock | 1,424 14 |
| Aug. | 18, | cash paid his note | 5,000 00 |
| | 28, | " " | 5,000 00 |
| 1867. | | | |
| Feb. | 1, | 1,000 shares Torch Lake stock, at $1.50 | 1,500 00 |
| | 1, | 3,500 shares Secs. 35 and 36, at $1.25 | 4,375 00 |
| 1879. | | | |
| July | 1, | ⅓ int. Sec. 23, including expenses and int. to date | 12,344 94 |

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| | | | |
|---|---|---|---|
| 1865. | | CONTRA, CR. | |
| Sept. | 12, | By amt. rec'd of J. H. Cotton, 500 shares Adams | $3,000 00 |
| | 20, | Head & Perkins, 200 shares Adams | 1,000 00 |
| Oct. | 4, | A. A. Frazer, 500 shares S. Pewabic | 3,000 00 |
| | 4, | E. T. Loring, 11 shares S. Pewabic | 66 00 |
| Nov. | 20, | his note discounted at bank | 2,387 50 |
| 1866. | | | |
| Jan. | 12, | rec'd of Head & Perkins | 82 23 |
| Feb. | 26, | from Land Warrants | 230 00 |
| Mar. | 30, | cash | 100 00 |
| May | 2, | amt. received for 250 shares S. Pewabic | 1,758 75 |
| | 18, | his note discounted at bank | 2,407 50 |
| | 28, | rec'd of Wm. Cobb, 500 shares Adams | 2,917 20 |
| Sept. | 4, | for 1,000 shares Adams | 6,000 00 |
| | 27, | ½ J. B. Ross bill entinguishing title | 30 00 |
| 1867. | | | |
| Feb. | 1, | bal. from land acct., so-called | 566 67 |
| | 15, | amt. rec'd his note discounted at bank | 4,807 50 |
| | 25, | " " " | 4,807 50 |

| | | | |
|---|---|---|---|
| 1867. | | | |
| May | 21, | By amt. rec'd from Ossipee Co. for services | $2,500 00 |
| Nov. | 8, | his note discounted at bank | 4,864 17 |
| | 12, | " " " | 4,877 92 |
| | 18, | " " " | 4,846 26 |
| Dec. | 16, | " " " | 4,877 92 |
| 1868. | | | |
| Jan. | 4, | his note discounted | 4,845 84 |
| Apr. | 13, | " " less stamps | 4,846 26 |
| | 23, | " " " | 4,847 50 |
| | 28, | " less stamps | 4,843 75 |
| July | 1, | dividend D. & L. S. C. Co., 1,125 shares | 1,687 50 |
| Aug. | 14, | net amt. his note | 4,877 92 |
| | 17, | " | 4,860 83 |
| | 18, | " | 4,794 17 |
| | 27, | " | 4,794 17 |
| | 31, | " | 4,795 28 |
| Sept. | 3, | " | 4,860 83 |
| | 12, | " | 4,843 75 |
| Nov. | 7, | amt. rec'd from Kearsarge Co., for land | 2,500 00 |
| | 7, | " " for services | 500 00 |
| Dec. | 21, | " Kingsbury for D. & L. S. stock | 5,000 00 |
| | 28, | " " " " | 10,000 00 |
| 1869. | | | |
| Feb. | 16, | cash rec'd from his note | 4,801 94 |
| Mar. | 20, | cash from sale of Hecla stock | 8,000 00 |
| 1872. | | | |
| Mar. | 15, | rec'd from sale 2,595 shares Ossipee at $5.00 | 12,975 00 |
| April | 8, | amt. " 3,500 shares Secs. 35 and 36 | 1,750 00 |
| July | 16, | cash " sale of 1,420 shares Adams at $1⅔ | 2,366 67 |

609 *Statement of the "Land Account."*

C. H. PALMER, IN ACCOUNT WITH E. T. LORING IN CONNECTION WITH STOCKS OF THE OSSIPEE, KEARSARGE, AND IROQUOIS MINING COMPANIES.

| | | | | |
|---|---|---|---|---|
| 1866. | | | | |
| Dec. | 28, | To cash paid C. H. P. | | $3,000 00 |
| 1867. | | | | |
| Feb. | 1, | To amount stock sold of O. & K. Co. at the lake | | 78,000 00 |
| | 1, | 5,251 shares Ossipee allotted to W. B, F. and associates | | 25,379 83 |
| | 1, | 3,075 shares Kearsarge allotted to W. B. F. and associates | | 8,200 00 |
| | 1, | 4,100 shares Iroquois allotted to W. B. F. and associates | | 2,050 00 |
| | 1 | 2,595 shares Ossipee allotted to C. H. P. & Son | | 12,452 50 |
| | 1, | 200 shares Ossipee loaned C. H. Palmer | | 966 67 |
| | 1, | 1,875 shares Kearsarge allotted C. H. P. & Son | | 5,000 00 |
| | 1, | 2,500 shares Iroquois allotted C. H. P. & Son | | 1,250 00 |
| | 1, | 375 shares Ossipee allotted S. Mandlebaum | | 1,812 50 |
| | 1, | 250 shares Ossipee allotted Peleg Hall | | 1,208 33 |
| | 1, | 1,470 shares Ossipee allotted A. H. Sibley, | | 7,105 00 |
| | 1, | 1,000 shares Iroquois allotted A. H. Sibley | | 500 00 |
| | 1, | 750 shares Kearsarge allotted A. H. Sibley | | 2,000 00 |
| | | balance | | 566 67 |

| 1866. | | CONTRA, CR. | | |
|---|---|---|---|---|
| Nov. | 8, | By draft of S. Mandelbaum on acct. his Ossipee | ------ | $1,000 00 |
| 1867. | | | | |
| Feb. | 1, | total amt. W. B. Frue drafts, $114,299 80 Less amt. in excess of cost of stock, &c 5,669 97 | ------ | 108,629 83 |
| Jan. | 7, | cash from C. H. Palmer | ------ | 6,000 00 |
| | | cash from C. H. Palmer | ------ | 4,000 00 |

610

| | | | | |
|---|---|---|---|---|
| Mar. | 23, | By amt. rec'd from Hall and others | ------ | 4,951 80 |
| | 29, | note of C. C. Douglass, net | ------ | 2,826 38 |
| Apr. | 3, | am't from J. H. Cotton for Kearsarge & Iroquois | ------ | 2,812 50 |
| Apr. | 3, | note from A. H. Sibley | ------ | 2,328 33 |
| June | 25, | remittance from S. Mandelbaum, bal. on acc't Ossipee | ------ | 820 00 |
| July | 12, | remittance from S. Mandelbaum, bal. on acct. K & I Cos. | ------ | 2,288 10 |
| Aug. | 1, | am't rec'd from A. H. Sibley on acct. Ossipee | ------ | 7,104 95 |
| 1868. | | | | |
| Apr. | 20, | am't rec'd from J. H. Cotton for stock bought of Palmer | ------ | 1,619 29 |
| July | 25, | am't rec'd from C. H. P., Jr, acct. Ossipee stock | ------ | 610 32 |
| | | | $144,491 50 | $144,491 50 |
| | | By balance to C. H. Palmer's account | ------ | $566 67 |

Report of Special Master Herschel Whitaker. Filed in clerk's office April 17, 1882. A. Mandell, clerk.

611 *Complainant's Exceptions to Master's Report.*

In the Circuit Court of the United States for the Eastern District of Michigan. In Equity.

CHARLES H. PALMER, Complainant,

*vs.*

ELISHA T. LORING and CHARLES A. WELCH, Defendants.

Exceptions taken by the complainant above named to the report of Herschel Whitaker, to whom, as special master, said cause was, by decree heretofore entered therein, duly referred to take proofs, and to state an account between said complainant and said defendant, Loring:

*First.* For that the said master, in the third paragraph of his said report, has allowed to defendant the charge of "200 shares Ossipee loaned to C. H. P.," which was stock used by complainant for the purpose for which it was set apart in the organization of the company, and should not be charged to him.

612 *Second.* For that the master has allowed any of the remaining charges and credits in said third paragraph, except

the charge under date of February 1st, 1867, for 1,000 shares Torch Lake stock. Complainant excepts thereto, for the reason that the complainant never received any of the stocks mentioned in said several items, with the purchase price of and assessments upon which he is charged; nor does defendant now make profert of them. On the contrary, the record shows that defendant, Loring, while holding these stocks in his own name, as trustee, upon his own motion, sold them without the consent or knowledge of the complainant. We therefore ask that all items relating thereto be stricken from the account.

*Third.* For that said master, in the two credit items mentioned in said third paragraph of his report, has allowed complainant only the amount claimed by defendant, Loring, to have been actually received for the stocks therein mentioned, whereas complainant is entitled to credit for the value of the said stocks, as shown by the evidence, and which exceeds said amounts as allowed.

*Fourth.* For that said master has charged said complainant, in three debit items mentioned in said paragraph 3 of said report, with assessments upon, and has credited him, in one of the credit items mentioned in said paragraph, with, the proceeds of 1,420 shares of Adams stock, whereas said Loring only held in trust for complainant 1,000 shares thereof, and complainant should not be charged with assessments upon, or credited with proceeds of, more than that number.

*Fifth.* For that the said master, in paragraph 4 of said report, has allowed the credit of $1,750, which should not have been allowed, for the reasons stated in the second exception.

*Sixth.* For that the said master has disallowed the credit of items of cash received from W. B. Frue, mentioned in the sixth paragraph of said report. This disallowance is proper, under the theory
613 on which said report is made; but should the court order replaced the items defendant, Loring, seeks to have charged, which are disallowed in the seventh paragraph of said report, complainant is entitled to the credit disallowed in said sixth paragraph.

*Seventh.* For that said complainant is entitled, in addition to the amounts allowed by said master, to be allowed a credit, as for cash received by said Loring to complainant's use, for such a proportion of the profits on sale at the Lake of 2,000 shares of Ossipee stock, for the benefit and on joint account of the original proprietors, of which complainant was one, as the number of shares of said stock allotted to complainant is of the whole number of shares of said original proprietors.

In all which particulars complainant excepts to said report, and appeals therefrom to the judgment of this court.

ASHLEY POND,
*Solicitor for Complainant.*

Complainant's exceptions to Master's report.
Filed in clerk's office April 17, 1882.

A. MANDELL, *Clerk.*

615 *Defendant Loring's exceptions to Master's Report.*

In the Circuit Court of the United States for the Eastern District of Michigan. In Equity.

CHARLES H. PALMER *vs.* ELISHA T. LORING, CHARLES A. WELCH.

Exceptions taken by Elisha T. Loring, one of the above named defendants, to the general report of Herschel Whitaker, to whom as special master said cause was, by decree heretofore entered therein, duly referred to take proofs and to state an account between said complainant and said defendant Loring.

1*st Exception.* For that the said special master has credited said complainant with $1,750.00, as "being the amount received by Loring, upon the sale of 3,500 shares, 'south half' of Sec. 35 and 36, allotted to Palmer," whereas the complainant is not entitled to credit for that or any other sum in the premises.

616 2*d Exception.* For that the said special master has found, that the said "complainant should be charged with discounts only when they were rendered necessary by the state of his account," whereas the said complainant should be charged with all the discounts upon his notes, and with all sums paid for renewal of said notes.

3*d Exception.* For that the said special master has not charged said complainant with the cost of Torch Lake and "south half" of Secs. 35 and 36, allotted to Wm. B. Frue, and assessments thereon, viz:

| | | |
|---|---|---|
| 1867. | | |
| Feb. 1, | To 2,600 shares Torch Lake stock, at $1.50 | $3,900 00 |
| Feb. 1, | To 3,000 shares Secs. 35 and 36, at $1.25 | 3,750 00 |
| 1872. | | |
| Ap'l 20, | To assessment on 2,600 shares Torch Lake, at $0.75 | 1,950 00 |
| 1879. | | |
| Ap'l 15, | To assessment on 2,600 shares Torch Lake, at $0.20 | 520 00 |

but has disallowed the same, whereas each and every of said items of cost of Torch Lake and "south half" of Secs. 35 and 36, and the assessments thereon should be allowed to defendant Loring and charged to said complainant in said account.

4*th Exception.* For that the said special master has not charged said complainant with the assessments on 1,000 shares of Torch Lake stock allotted to complainant, which assessments were paid by defendant Loring, viz:

| | | |
|---|---|---|
| 1872. | | |
| Ap'l 20, | To assessment on 1,000 shares Torch Lake stock, at 75c | $750 00 |
| 1879. | | |
| Ap'l 15. | To assessment on 1,000 shares Torch Lake stock, at 20c | 200 00 |

617 whereas each of said sums should be allowed to defendant Loring, and charged to said complainant in said account.

Wherefore, the said defendant doth except to the said general report, and appeals therefrom to the judgment of this court.

C. I. WALKER,
*Solicitor for defendant Loring.*

Defendant Loring's exceptions to Master's report.

Filed in clerk's office, April 18, 1882.

A. MANDELL, *Clerk.*

619 And afterwards to wit, and now on this day, that is to say, at a session of the Circuit Court of the United States, for the eastern district of Michigan, continued and held at pursuant to adjournment at the district court room in the city of Detroit, on Wednesday the third day of May, in the year one thousand eight hundred and eighty-two.

Present, the Honorable Henry B. Brown, district judge.

CHARLES H. PALMER, Complainant,
*vs.*
ELISHA T. LORING and CHARLES A. WELCH, Defendants. } In Equity.

The exceptions to the report of Special Master Herschel Whitaker, now coming on to be heard, are argued in part by counsel for the respective parties, and continued for further hearing.

620 And afterwards, to wit, and now on this day, that is to say, at a session of the Circuit Court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment at the district court room in the city of Detroit, on Thursday, the fourth day of May, in the year one thousand eight hundred and eighty-two.

Present, the Honorable Henry B. Brown, district judge.

CHARLES H. PALMER, Complainant,
*vs.*
ELISHA T. LORING and CHARLES A. WELCH, Defendants. } In Equity.

The exceptions to the report of Special Master Herschel Whitaker again coming on to be heard, the arguments of counsel are concluded and the exceptions submitted.

621 And afterwards, to wit, on the 4th day of November, A. D. 1882, a certain stipulation was filed in the office of the clerk of this court, which stipulation was in the words and figures following, to wit:

*Stipulation as to certain Items of Account.*

In the Circuit Court of the United States for the Eastern District of Michigan.

CHARLES H. PALMER
*vs.*
ELISHA T. LORING and CHARLES A. WELCH. } In Equity.

It is hereby stipulated and agreed by and between the parties to the above-entitled suit, that the Master in stating the account between said Palmer and said Loring shall take, as the basis of his statement, Loring's amended account filed in said cause, which shall stand in all respects as filed, except in the following particulars, viz:

1. One-half shall be deducted from each of the small items for telegraphing, &c., amounting to $166.26, and the interest thereon reduced accordingly, this instead of the bulk charge of $83.33, as in Master's report, for convenience of computing interest.

2. The items in said account for assessments on Adams stock shall be reduced, wherever they occur, from 1,420 to 1,000 shares.

3. The charge for Torch Lake stock shall be reduced from 2,600 to 1,000 shares, and the charge for south ½ Secs. 35 and 36 shall be reduced from 65,000 to 3,500 shares.

4. Credit Palmer, as of April 8, 1872, with $1,750, as proceeds of sale of 3,500 shares south ½ Secs. 35 and 36.

5. Reduce the item of July 16, 1872, for proceeds of sale of 1,420 shares of Adams, $2,366.67, to proceeds of sale of 1,000 shares of Adams, $1,666.67.

6. Make the interest 7 per cent. where it is now 8 per cent.; in all other respects compute as in said amended account.

7. Deduct as of July 1st, 1879, from the item for "cost ⅓ interest in Sec. 23, including expenses and interest to date, $12,344.94," the sum of $528.09 being ⅓ the expenses and interest thereon, included in said item, the same having since been provided for in another way.

8. The Master shall compute interest on the balance, which he shall strike July 1st, 1879, where said amended account ends, from that date to date of his report.

622 It is understood this stipulation is not to affect in any way the claim of either party to the Kearsarge stock in Mr. Loring's hands.

DETROIT, *Sept.* 16, 1882.

ASHLEY POND,
*Sol'r for Complainant.*
C. I. WALKER,
*Sol'r for Def'ts.*

9. Omit also the two items, paid H. Bigelow to bal. at $96.19, and paid S. &. W. for legal service, $6.

ASHLEY POND,
*Sol'r for Complainant*
C. I. WALKER,
*Sol'r for Def'ts.*

Endorsed: No. 1,982. The circuit court of the United States for the eastern district of Michigan, in equity. Charles H. Palmer *vs.* Elisha T. Loring and Charles A. Welch. Stipulation as to certain items of account, filed in the clerk's office Nov. 4, 1882. Walter S. Harsha, clerk.

623 And afterwards, to wit, on the 23d day of September, the report of Special Master Herschel Whitaker was filed in the office of the clerk of this court, which report was in the words and figures following, to wit:

*Report of Special Master Herschel Whitaker.*

In the Circuit Court of the United States for the Eastern District of Michigan. In Equity.

CHARLES H. PALMER, Complainant,
*vs.*
ELISHA T. LORING AND CHARLES A. WELCH, Defendants.

The undersigned, Herschel Whitaker, to whom, as special master, said cause was referred for a statement of the account between said complainant and said defendant, Loring, upon the basis of the opinion of the court heretofore delivered upon a hearing before the court, upon exceptions to a prior report of said special master, hereby makes return and reports that he was attended by the solicitors of the respective parties, and has made a statement of said account upon the basis of said opinion, which statement is hereto attached, and is herewith returned and filed.

All of which is respectfully submitted.

HERSCHEL WHITAKER,
*Special Master.*

DETROIT, *Sept.* 23, 1882.

624

CHAS. H. PALMER in Account with ELISHA T. LORING.

| 1865. | DR. INTEREST ACC'T, 7 PER CENT. | | |
|---|---|---|---|
| Oct. 8, | To amount remitted to R. H. Rickard per order | $139 42 | $1,500 00 |
| Oct. 24, | paid E. D. Brigham, S. W. Stock | 215 02 | 2,420 00 |
| Oct. 7, | paid draft favor G. H. Sanford | 176 55 | 2,000 00 |
| Nov. 14, | paid draft W. B. Frue favor J. Senter | 88 23 | 450 00 |
| Nov. 28, | paid draft W. B. Frue favor of J. Senter | 49 35 | 600 00 |
| 1866. | | | |
| Jan. 12, | transferred to account of W. B. Frue | 186 88 | 2,535 75 |

| | | | | |
|---|---|---|---|---|
| 1866. | | | | |
| Mar. 9, | To amount paid draft favor of J. N. & Co., $150 cash $100 | | $15 66 | $250 00 |
| May 18, | paid his note | | | 2,500 00 |
| May 18, | paid Tilton on his account | | 300 08 | 3,600 00 |
| Aug. 13, | paid favor of N. B. H. | | 6 53 | 200 00 |
| Sept. 1, | paid favor of J. B. Ross | | 4 38 | 150 00 |
| Sept. 4, | note paid L. Bird | | 142 92 | 5,000 00 |
| Sept. 27, | cash | | 2 41 | 100 00 |
| Nov. 1, | ass't on 250 shares of So. Pewabic stock | | 13 12 | 750 00 |
| Nov. 1, | paid 100 shares Hecla stock (cash Oct. 17) | | 121 33 | 6,000 00 |
| Nov. 3, | ½ expenses to Pittsburgh | | 42 | 25 00 |
| Nov. 17, | ½ sundry telegrams | | 19 | 13 48 |
| Nov. 17, | paid his note at bank | | 35 87 | 2,500 00 |
| Dec. 28, | ½ expenses collecting draft on Chicago | | | 1 52 |
| Dec. 31, | ½ sundry telegrams to date | | 11 | 13 11 |
| Dec. 31, | ½ expenses express and copying deed | | | 3 32 |
| 1867. | | | | |
| Jan'y 12, | ½ expenses express on specimens | | | 2 13 |
| Jan'y 12, | ½ expenses, telegraphing | | 04 | 4 45 |
| Jan'y 25, | ½ expenses telegraphing sundry times | | | 8 04 |
| | | | $1,448 51 | |
| Feb. 1, | To balance interest to date | | | 20 48 |
| | | | | $30,647 29 |

625

| 1865. | Contra, Cr. | Interest Acc't, 7 Per Cent. | | |
|---|---|---|---|---|
| Sept. 12, | By amount received of J. H. Cotton, 500 shares Adams stock | | $291 08 | $3,000 00 |
| Sept. 20, | received of C. D. Head and T. H. Perkins, 200 shares Adams stock | | 105 01 | 1,100 00 |
| Oct. 4, | received of A. A. Frazer, 500 shares of So. Pewabic stock | | | 3,000 00 |
| Oct. 4, | rec'd of E. T. L. 11 shs. Pewabic stock | | 284 36 | 66 00 |
| Nov. 20, | his note discounted at bank | | 200 13 | 2,387 50 |
| 1866. | | | | |
| Jan'y 12, | received of C. D. Head and T. H. Perkins | | 6 04 | 82 23 |
| Feb'y 26, | received from land warrants | | 14 98 | 230 00 |
| March 30, | cash | | 5 92 | 100 00 |
| May 2, | rec'd for 250 shs. So. Pewabic stock | | 92 00 | 1,758 75 |
| May 18, | his note discounted at bank | | 118 46 | 2,407 50 |
| May 28, | rec'd of William Cobb for 500 shares Adams stock | | 137 83 | 2,917 20 |
| Sept. 4, | rec'd for 1,000 shares Adams stock | | 171 50 | 6,000 00 |
| Sept. 27, | rec'd half J. B. Ross' bill for extinguishing title | | 75 | 30 00 |
| | | | $1,428 03 | |
| 1867. | | | | |
| Feb'y 1, | By balance to his credit on land acc't in connection with Ossipee, Kearsarge and Iroquois Mining Cos., as per copy of acc't herewith | | | 566 67 |
| Feb'y 1, | By balance carried forward | | | 7,001 44 |
| | | | | $30,647 29 |

| 1867. | Dr. | Int. Acc't. 7 Per Ct. | |
|---|---|---|---|
| Feb. 1, | To balance bro't forward | $449 26 | $7,001 44 |
| Feb. 19, | cash $225, 21st cash $100, 25th cash $700 | 62 18 | 1,025 00 |
| March 4, | $200, $140 | 19 60 | 340 00 |
| March 7, | paid ½ telegraphing | 22 | 4 02 |
| April 1, | ass't on 100 shares Hecla stock | 15 75 | 300 00 |
| April 8, | Smelting Works stock | 56 63 | 1,086 40 |
| 626 | | | |
| April 22, | ½ sundry telegrams | 39 | 8 05 |
| May 7, | $50, 17th cash $22 | 3 22 | 72 00 |
| May 20, | | 66 70 | 150 00 |
| June 25, | paid draft favor J. Chassel $100, 29th, cash $100 | 7 23 | 200 00 |
| July 15, | assessment 100 shares Hecla stock | 16 14 | 500 00 |
| Aug. 6, | 250 shares South Pewabic stock and interest | 35 58 | 1,259 79 |
| Aug. 9, | renewal of notes at bank | 9 66 | 350 00 |
| Aug. 27, | draft in his favor | 4 82 | 200 00 |
| Sept. 19, | assessment on 1,000 shares Adams stock | 40 67 | 2,051 34 |
| Nov. 8, | paid ass't on 250 shares So. Pew. stock | 7 81 | 757 88 |
| Nov. 18 | paid ass't on 250 shares So. Pew. stock | 8 39 | 1,000 00 |
| Nov. 20, | paid draft favor Mrs. Palmer | 2 39 | 3,000 00 |
| Nov. 21, | paid ass't on 100 shares Hecla stock | 7 81 | 1,005 00 |
| Nov. 27, | paid draft favor Mrs. Palmer | 67 | 100 00 |
| Dec. 10, | paid draft favor Mrs. Palmer | 1 23 | 300 00 |
| Dec. 17, | paid ass't on 1,000 shares Adams stock | 8 28 | 3,039 08 |
| | | $764 63 | |
| Dec. 31, | To balance to new account | | 10,605 48 |
| | | | $31,655 48 |

| 1867. | Contra, Cr. | Interest Acc't 7 Per Ct. | |
|---|---|---|---|
| Feb'y 15, | By net amount his note discounted at bank | $295 42 | 4,807 50 |
| Feb'y 25, | his note discounted at bank | 286 07 | 4,807 50 |
| May 21, | received from Ossipee Mn'g Co. for services rendered | 106 95 | 2,500 00 |
| Nov'r 8, | received from his note discounted at bank, 4 months | 50 12 | 4,864 17 |
| Nov'r 12, | received from his note discounted at bank, 4 months | 46 48 | 4,877 92 |
| Nov'r 18, | received from his note discounted at bank, 4 months | 39 57 | 4,846 26 |
| Dec. 16, | received from his note discounted at bank, 4 months | 14 33 | 4,877 92 |
| | | $838 84 | |
| 627 | | | |
| Dec. 31, | By bal. interest account | | 74 21 |
| | | | $31,655 48 |

| 1868. | Dr. | Interest Acc't 7 Per Cent. | |
|---|---|---|---|
| Jan. 4, | To cash paid for stamps | | $2 50 |
| 21, | paid ass't on Hecla stock | $26 64 | 400 00 |
| Feb'y 11, | renewing note at bank | 25 20 | 405 00 |
| 17, | paid C. H. P | 6 08 | 100 00 |
| 26, | paid draft favor of A. H. Sibley | 14 33 | 250 00 |
| 29, | renewal of note | 10 63 | 180 42 |
| Mar. 7, | renewal note and stamp | 11 77 | 205 33 |
| 19, | paid his note | 274 16 | 5,000 00 |

| | | | | |
|---|---|---|---|---|
| 1868. | | | | |
| April | 15, | To cash paid stock D. L. & S. Copper Co. | $145 60 | $2,925 00 |
| | 18, | paid draft favor of Revere House | 8 37 | 171 61 |
| | 18, | paid his note | 246 05 | 5,000 00 |
| | 25, | paid his note | 239 16 | 5,000 00 |
| May | 1, | paid Weed File Co. | 9 89 | 211 47 |
| | 4, | paid draft Revere House | 9 22 | 200 00 |
| June | 18, | paid Weed File Co. | 8 16 | 211 47 |
| Aug. | 14, | paid his note | ------ | 5,000 00 |
| | 14, | paid his note | 266 39 | 5,000 00 |
| | 22, | paid his note | 125 42 | 5,000 00 |
| | 27, | paid his note | 120 55 | 5,000 00 |
| | 31, | paid his note | 116 66 | 5,000 00 |
| Sept. | 1, | paid his note | 116 66 | 5,000 00 |
| | 12, | paid his note | 105 97 | 5,000 00 |
| | 28, | paid ass't on 250 shs. So. Pewabic stock | 13 67 | 756 28 |
| Nov. | 19, | paid draft favor of S. M. | 9 56 | 1,200 00 |
| Dec. | 16, | paid his note | 14 59 | 5,000 00 |
| | 19, | paid his note | 11 66 | 5,000 00 |
| | | | $1,936 89 | |
| Dec. | 31, | Balance to new acc't | ------ | $17,050 25 |
| | | | | $84,278 88 |

| 1868. | | Contra, Cr. Interest Acc't 7 Per Cent. | | |
|---|---|---|---|---|
| | | Balance brought forward | $742 38 | $10,605 48 |
| Jan. | 4, | By cash net am't of note | 836 38 | 4,845 84 |
| April | 18, | net am't less stamp | 243 11 | 4,846 26 |
| | 23, | net am't of note less stamp | 233 77 | 4,847 50 |
| | 28, | net am't of note less stamps | 228 87 | 4,843 75 |
| July | 1, | div'd D. & L. S. C. Co., 1,125 shs. | 59 08 | 1,687 50 |
| 628 | | | | |
| Aug. | 14, | net am't of his note | 129 97 | 4,877 92 |
| | 17, | net am't of his note | 126 65 | 4,860 88 |
| | 18, | net am't of his note | 123 98 | 4,794 17 |
| | 27, | net am't of his note | 115 58 | 4,784 47 |
| | 31, | net am't of his note | 111 88 | 4,795 28 |
| Sept. | 13, | net am't of his note | 111 64 | 4,860 83 |
| | 12, | net am't of his note | 101 72 | 4,843 75 |
| Nov. | 7, | net from Kearsarge Co. for lands | ------ | 2,500 00 |
| | 7, | paid by Kearsarge Co. his services | 31 88 | 500 00 |
| Dec. | 21, | from F. J. Kingsbury for D. & L. S. stock | 9 72 | 5,000 00 |
| | 28, | from F. J. Kingsbury for D. & L. S. stock | 5 88 | |
| | | | $2,712 44 | 10,000 00 |
| Dec. | 31, | By balance interest acc't | ------ | 775 55 |
| | | | | $84,278 88 |

| 1868. | | Contra, Cr. Interest Acc't 7 per Cent. | | |
|---|---|---|---|---|
| Dec. | 31, | By balance forward | $1,194 15 | $17,059 25 |
| 1869. | | | | |
| Feb. | 16, | By cash rec'd from his note | 294 12 | 4,801 94 |
| Mar. | 20, | rec'd from sale of Hecla stock | 437 12 | 8,000 00 |
| | | | $1,925 39 | |
| Dec. | 31, | By balance interest account | ------ | 302 35 |
| | 31, | to new account | ------ | 1,065 18 |
| | | | | $31,288 72 |

| 1869. | | Dr. Interest Acc't 7 Per Cent. | | |
|---|---|---|---|---|
| Jan. | 6, | To cash paid his note at bank | $345 14 | $5,000 00 |
| | 15, | paid his note at bank | 336 38 | 5,000 00 |
| Feb. | 17, | paid renewing his note | 12 22 | 200 00 |
| | 20, | paid his note at bank | 302 37 | 5,000 00 |
| Mar. | 8, | paid his note at bank | 291 47 | 5,000 00 |
| | 20, | paid for sale of Hecla stock | 1 58 | 25 80 |
| | 31, | ass't on Adams' stock, cash, Nov. 10, 1868 | 80 13 | 1,002 92 |
| Aug. | 13, | paid his note | 134 16 | 5,000 00 |
| | 28, | paid his note | 119 59 | 5,000 00 |
| | | | $1,623 04 | $31,228 72 |

| 1869. | | Dr. Interest Acc't 7 Per Cent. | | |
|---|---|---|---|---|
| Jan. | 1, | To balance forward | $223 69 | $1,065 18 |
| | | | $223 69 | |
| Dec. | 31, | To balance carried forward | ------ | 15,964 45 |
| | | | | $17,029 63 |
| 1872. | | Contra, Cr. | | |
| Mar. | 15, | By cash rec'd from sale of Ossipee stock, 2,595 shares, at $5 | 719 03 | 12,975 00 |
| April | 8, | proceeds of sale S. ½ secs. 35 and 36 | 89 14 | 1,750 00 |
| July | 16, | cash rec'd from sale of Adams' stock, 1,000, at $1⅔ | 58 48 | 1,666 67 |
| | | | $861 65 | |
| Dec. | 31, | By bal. interest account | ------ | 637 96 |
| | | | | $17,029 63 |

629

| 1867. | | Dr. | | |
|---|---|---|---|---|
| Feb'y | 1, | To 1,000 shs. Torch Lake stock, at $1.50 | ------ | $1,500 00 |
| | 1, | 3,500 shs. Secs. 35 and 36 stock, at $1.25 | ------ | 4,375 00 |
| 1872. | | | | |
| July | 1, | interest on above items to date | ------ | 5,106 85 |
| | 1, | ⅓ interest Sec. 23, including interest and expenses to July 1, 1879 | 12,344 94 | |
| | | Less ⅓ expenses, etc., since paid | 528 09 | |
| | | | | 11,816 85 |
| | | amount to balance carried forward | | 430 07 |
| | | | | 28,228 27 |
| 1872. | | Contra Cr. | | |
| Dec. | 31, | By balance brought forward | ------ | 15,964 45 |
| 1879. | | | | |
| July | 1, | To int. on $15,964.45, six years 6 mos. at 7 per cent | ------ | 7,263 82 |
| | | | | $23,228 27 |
| 1879. | | Cr. | | |
| July | 1, | By balance brought forward | ------ | 430 07 |
| | 1, | interest on same to date, 3 years, 2 months, 23 days | ------ | 97 45 |
| 1882. | | Sept. 23, Balance due to C. H. Palmer | ------ | $527 52 |

C. H. PALMER IN ACCOUNT WITH E. T. LORING IN CONNECTION WITH STOCKS OF THE OSSIPEE, KEARSARGE AND IROQUOIS MINING COMPANIES.

| 1866 | | DEBIT. | | |
|---|---|---|---|---|
| Dec. | 28, | To cash paid C. H. P | | $3,000 00 |
| 1867. | | | | |
| Feb. | 1, | amt. stock sold on acc't Ossipee and Kearsarge Mining Co., at the Lake | $73,000 00 | |
| | 1, | 5,251 shs. Ossipee, allotted to W. B. Frue and associates, at $4.83⅓ | 25,379 83 | |
| | 1, | 3,075 shs. Kearsarge, allotted to W. B. Frue and associates, at $2.66⅔ | 8,200 00 | |
| | 1, | 400 shs. Iroquois, allotted to W. B. Frue and associates, at 50 cents | 2,050 00 | |
| | | | | 108,629 83 |
| | 1, | 2,595 shs. Ossipee, allotted to C. H. Palmer & Son, at $4.83⅓ | 12,452 50 | |
| | 1, | 200 shs. Ossipee, loaned to C. H. Palmer | 966 67 | |

630

| | | | | |
|---|---|---|---|---|
| Feb'y | 1, | To 1,875 shs. Kearsarge allotted to C. H. Palmer & Son at $2.66⅔ | 5,000 00 | |
| | | 2,500 shs. Iroquois allotted to C. H. Palmer & Son at 50c | 1,250 00 | 19,669 17 |
| | | 375 shs. Ossipee allotted to S. Mandelbaum at $4.83⅓ | 1,812 50 | |
| | | 250 shs. Ossipee allotted to Peleg Hall at $4.83⅓ | 1,208 33 | 3,020 83 |
| | | 1,470 shs. Ossipee allotted to A. H. Sibley at $4.83⅓ | 7,105 00 | |
| | | 1,000 shs. Iroquois allotted to A. H Sibley at 50c | 500 00 | |
| | | 750 shs. Kearsage allotted to A. H. Sibley at $2.66⅔ | 2,000 00 | 9,605 00 |
| | | These stocks of Kearsarge and Iroquois Co's were subsequently assigned to S. Mandelbaum, J. H. Cotton, and the amount received for the same credited to C. H. Palmer under dates of July 12th, 1867, and April 20th, 1868. | | |
| | | To balance | | 566 67 |
| | | | | $144,491 50 |

| 1866. | | CONTRA, CREDIT. | | |
|---|---|---|---|---|
| Nov. | 8, | By draft of S. Mandelbaum on acc't of his allotment of Ossipee M'ng Co's stock | | $1,000 00 |
| 1867. | | | | |
| Feb'y | 1, | By total amount of draft remitted to C. H. Palmer by Wm. B. Frue in payment of stock sold and for his interest and that of his associates at the lake | $144,299 80 | |
| | | less am't in excess of cost of stock sold and allotted | 5,669 97 | 108,629 83 |
| | | This balance of $5,669.97 is passed to credit of W. B. Frue's account. | | |
| Jan. | 7, | By cash from C. H. Palmer | 6,000 00 | |
| | 9, | cash from C. H. Palmer | 4,000 00 | |
| March | 23, | am't rec'd from Hall and others | 4,951 80 | |
| | 29, | note of C. C. Douglass, net | 2,326 38 | 17,278 18 |

| | | | |
|---|---|---|---|
| 1867. | | | |
| April 8, | By am't from C. H. Cotton on acc't of C. H. P. for interest in Kearsarge and Iroquois Co's. note from A. H. Sibley on acc't of C. H. P. for interest in Kearsarge and Iroquois Co's | $2,812 50<br>2,828 38 | |
| June 25, | remittance from S. Mandelbaum, bal. on acc't of Ossipee stock | 820 00 | $5,960 88 |
| 631 | | | |
| July 12, | remittance from S. Mandelbaum on acc't of int. in Kearsarge and Iroquois Co's, bought of C. H. Palmer, say note $1,000, draft $360.83, draft $485.05, draft $442.22 | 2,288 10 | |
| Aug. 1, | am't rec'd from A. H. Sibley on acc't of Ossipee stock | 7,104 95 | |
| 1868. | | | |
| April 20, | By am't rec'd from J. H. Cotton on acc't of stock bought of C. H. Palmer | 1,619 29 | |
| July 25, | am't rec'd from C. H. Palmer, Jr | 610 82 | 11,622 66 |
| | | | $144,491 50 |
| | By balance to C. H. Palmer's private acc't. | | 566 67 |

Endorsed: No. 1,982. Circuit Court of the United States, Eastern District of Michigan. Report of special master Herschel Whitaker. Charles H. Palmer, compl't, *vs.* Elisha T. Loring and Charles A. Welch, defendants. Filed in clerk's office Sept. 23, 1882. Walter S. Harsha, clerk.

632 And afterwards, to wit, and now on this day, that is to say—

At a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment at the district court room, in the city of Detroit, on Monday, the thirtieth day of October, in the year one thousand eight hundred and eighty-two—

President, Honorable Henry B. Brown, district judge.

CHARLES H. PALMER, Complainant,
*vs.*
ELISHA T. LORING AND CHARLES A. WELCH, Defendants.
} In Equity.

This cause having been heretofore heard on pleadings and proofs, and this court, on the twenty-third day of May, A. D. 1879, having decreed—

1. That said defendant Loring did take and receive the contract with Thomas F. Mason, of date June 18, 1868, described and set forth in the bill of complaint in said cause, for the purchase from said Mason of the lands hereinafter described, in trust for himself, one William B. Frue, and the complainant, in equal undivided interest, and that the same and the said lands were, in the hands of said Loring, charged with a trust in favor of said complainant to extent of an undivided one-third interest therein; that the said trust became, and was, from the execution and delivery of said contract,

a vested interest in said complainant, subject to the payment by him of his full proportion of the purchase money and the interest thereon; that said complainant has made no payment to the said Loring, which he directed to be applied, or which was by said Loring credited or applied specifically to and upon said purchase.

2. That the legal title to said lands subsequently acquired by said Loring from said Mason, in pursuance of said contract, was subject to and charged with said trust in favor of said complainant.

3. That the deed from said Loring to said defendant Welch, mentioned and set forth in said bill, was in violation of the rights of said complainant, and that said Welch took said title under said deed and now holds the same, charged with and subject to said trust in favor of said complainant.

4. That it be referred to Herschel Whitaker as special Master to take and state an account between said complainant and said defendant Loring, embracing all their dealings, including the aforesaid purchase from said Mason, and to take proofs thereon, etc.; that said Master report to the court his doings under said reference, together with the proofs taken thereon, and that if upon said accounting the court shall adjudge that there is any sum due and owing from said defendant to said Loring, the said complain-
633 ant pay the same into the registry of this court within such time as the court shall then direct.

5. That upon such payment being made, the defendants shall, within such time as the court shall then direct, release, and convey unto said complainant an undivided one-third interest of, in and to said premises, by a conveyance in due form of law, and that in default thereof said decree and said subsequent decree directing such conveyance shall stand in lieu of such conveyance, and vest in said complainant the full right, title, and interest of, in and to an undivided one-third of said lands and premises; and the said master having thereafter taken and stated said account, and reported the same, with the proofs, to the court, and exceptions having been filed thereto by the respective parties, and said exceptions having been argued and duly considered and passed upon, and said cause having thereupon been re-referred to said master to re-state said account, in accordance with the decision of the court upon said exceptions, and the said master thereupon having so re-stated said account and reported the same to the court, from which report it appears that there is nothing due and owing from said complainant to said Loring, but that on the contrary said Loring is indebted to said complainant, at the date of said report, in the sum of $527.52, and no exceptions having been filed to said final report.

Now, therefore, on motion of Ashley Pond, solicitor for complainant, it is ordered, adjudged, and decreed, and the court doth hereby order, adjudge, and decree, as follows:

1. That said final report of said Master and his statement of said account be and the same are hereby in all things ratified and confirmed.

2. That in addition to the amount by said report found to be due and owing from said Loring to said complainant, the said Loring holds in trust for said complainant five hundred shares of the capital stock of the Kearsarge Mining Company, which the said complainant is entitled to demand and receive.

3. That said defendant Elisha T. Loring and Charles A. Welch within thirty days from the date of this decree, release and convey by a conveyance in due form of law, unto the said complainant, an undivided one-third interest of, in and to the following described lands, viz.: the north half of the northwest quarter, and the northwest quarter of the southwest quarter of section twenty-three in township fifty-six north, of range thirty-three west, in the county of Houghton, and State of Michigan, and that in default thereof, this decree shall stand in lieu of such conveyance, and vest in said complainant the full right, title, and interest of, in and to an undivided one-third of said lands and premises.

634 4. That the said defendants and each of them, be, and they are hereby perpetually enjoined from conveying or in any manner incumbering or disposing of the said undivided one-third interest of said complainant in said lands and premises.

5. That said complainant recover of and from said defendants, his costs to be taxed and that he have execution therefor.

HENRY B. BROWN.

Endorsed: 1982. Circuit court of the United States eastern district of Michigan. In equity. Charles H. Palmer *vs.* Elisha T. Loring, *et al.* Decree filed and entered in clerk's office Oct. 30th, 1882. Walter S. Harsha, clerk.

635 And afterwards to wit, and now on this day, that is to say, at a session of the circuit court of the United States for the eastern district of Michigan, continued and held pursuant to adjournment, at the district court-room in the city of Detroit, on Monday, the sixth day of November, in the year one thousand eight hundred and eighty-two.

Present: The Honorable Henry B. Brown, district judge.

CHARLES H. PALMER
*vs.*
ELISHA T. LORING and CHARLES A. WELCH. } In Equity.

Now come the said defendants, by C. I. Walker, their solicitor, and in open court claim an appeal to the Supreme Court of the United States, from a decree of this court entered in this cause on the thirtieth day or October, A. D. 1882; and on motion of said solicitor it is ordered that said appeal be and the same is hereby allowed. And it is further ordered that said defendants give the usnal bond on appeal in the sum of five hundred dollars.

636 And afterwards, on the 1st day of December, A. D. 1882, a certain stipulation with bond on appeal thereto attached

was filed in the office of the clerk of this court, which stipulation and bond were in the words and figures following, to wit:

*Stipulation.*

CHARLES H. PALMER *vs.* ELISHA T. LORING AND CHARLES A. WELCH.

Whereas a decree has been rendered in the above-entitled cause in favor of said Palmer, and whereas said Loring and Welch have taken an order appealing from such decree to the Supreme Court of the United States. Now, therefore, it is hereby stipulated upon the part of said complainant that said Loring and Welch may perfect their appeal by filing their own personal bond in the usual form of an appeal bond, in the penal sum of five thousand dollars, without security; and the court is hereby authorized to approve said bond as satisfactory.

ASHLEY POND,
*Sol'r for Compl't.*

Detroit, Nov. 21st, 1882.

637 *Bond on Appeal.*

Know all men by these presents, that we, Elisha T. Loring and Charles A. Welch, of the State of Massachusetts, are held and firmly bound unto Charles H. Palmer, of the State of Michigan, in the just and full sum of five thousand dollars, to be paid to the said Charles H. Palmer, his certain attorney, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this —— day of November, in the year of our Lord, one thousand eight hundred and eighty-two.

Whereas, lately at a session of the circuit of the United States for the eastern district of Michigan, held at the court room in the city of Detroit, on the thirtieth day of October, in the year aforesaid, in a suit depending in said court in equity, between said Charles H. Palmer, complainant, and said Elisha T. Loring and Charles A. Welch, defendants, a decree was rendered against the said defendants; and whereas said defendants have taken an appeal from said decree to the Supreme Court of the United States.

Now, therefore, the condition of the above obligation is such that if the said Elisha T. Loring and Charles A. Welch shall prosecute said appeal to effect, and answer all damages and costs if they fail to make their said appeal good, and shall abide and perform such order and decree as the Supreme Court shall make therein, then the above obligation to be void, else to remain in full force and virtue.

ELISHA T. LORING. [SEAL.]
CHARLES A. WELCH. [SEAL.]

Sealed and delivered in presence of—
WM. E. WELCH.

Approved:
H. B. BROWN, *Dist. Judge.*

57—814

Endorsed: 1982. The circuit court of the United States for the eastern district of Michigan. In equity. Charles H. Palmer *vs.* Elisha T. Loring *et al.* Appeal bond and stipulation. Filed in clerk's office Dec. 1, 1882. Walter S. Harsha, clerk.

638 *Supplemental Bill of Costs on the Accounting.*

State of Michigan. The Circuit Court of the United States, Eastern District of Michigan. In Chancery.

CHARLES H. PALMER
*vs.*
ELISHA T. LORING and CHARLES A. WELCH.

Solicitor's fee, by rule, heretofore taxed.

*Solicitor's Fees.*

| | | |
|---|---|---|
| Deposition of Mr. Loring | $2 50 | |
| Burt | 2 50 | |
| Hadley | 2 50 | |
| Palmer | 2 50 | |
| Clarke | 2 50 | |
| Loring | 2 50 | |
| | | $15 00 |

*Registers' Fees.*

| | | |
|---|---|---|
| Additional to Mr. Mandell | $2 20 | |
| Harsha | 6 00 | |
| | | 8 20 |

*Master's Fees.*

| | | |
|---|---|---|
| For taking Loring's deposition at Boston | $80 00 | |
| Palmer's | 59 40 | |
| Clarke's | 7 00 | |
| Attendance on accounting, March 1, '82 | 2 00 | |
| May 12, '82. Attendance and making statement of A. C | 5 00 | |
| | | 153 40 |
| Printer's bill not included in above. | | |
| For printing master's first report | | 9 50 |
| May 18, 81. For printing 2d vol. on accounting | | 170 50 |
| | | $356 10 |
| | | 9 50 |
| | | $365 60 |

I hereby consent to the taxation of this bill of costs at the sum of three hundred and fifty-six and 10-100 dollars.

Dec. 1, 1882.

C. I. WALKER,
*Solicitor for Def'ts.*

Change all right. C. I. WALKER.

I hereby tax foregoing bill of costs at the sum of $365.60-100.

WALTER S. HARSHA, *Clerk.*

639 EASTERN DISTRICT OF MICHIGAN, *ss:*

I, Walter S. Harsha, clerk of the circuit court of the United States for the eastern district of Michigan, do hereby certify that the above and foregoing are true copies of the original files and papers in the case of Charles H. Palmer *vs.* Elisha T. Loring and Charles A. Welch, in said court, with the record, orders, and proceedings of said court thereon; that I have compared the same with the originals of record and on file in my office, and that they are true transcripts therefrom and of the whole thereof.

In testimony whereof I have hereunto set my hand and the seal of said court, at Detroit, in said district, this twentieth day of December, in the year one thousand eight hundred and eighty-two, and of the Independence of the United States of America the one hundred and seventh.

[SEAL.] WALTER S. HARSHA, *Clerk.*

Endorsed on cover: E. Michigan C. C., U. S. No. 814. Elisha T. Loring and Charles A. Welch, appellants, *vs.* Charles H. Palmer. Filed 29th December, 1882.

118-321

Office Supreme Court U. S.
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DEC 21 1885
JAMES H. McKENNEY,
CLERK.

# The Supreme Court of the United States.

*October Term, 1885.*

No. 183.

ELISHA P. LORING AND CHARLES A. WELCH,
*Appellants,*

vs.

CHARLES H. PALMER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

BRIEF OF C. I. WALKER, SOLICITOR FOR APPELLANTS.

SOHIER & WELCH,
JOSEPH H. CHOATE, } OF COUNSEL.

# SUPREME COURT

OF THE

## UNITED STATES.

ELISHA T. LORING and
CHARLES A. WELCH,
*Appellants*,
vs.
CHARLES H. PALMER.

*BRIEF OF C. I. WALKER,*
*Solicitor for Appellants.*

GENERAL OBJECTS OF THE BILL.

The bill in this cause, which was brought in the Circuit Court of the United States for the Eastern District of Michigan, by Charles H. Palmer, as complainant, against the appellants, as defendants, seeks a decree to have one-third of one hundred and twenty acres of land situated in Houghton county, Michigan, and particularly described in the bill, the fee of which is held by the defendant Welch under a conveyance from the defendant Loring, declared to be held in trust for the complainant, upon the ground that Loring so held it, and that Welch is not a *bona fide* purchaser, and took it from Loring subject to the trust.

This trust is fully denied by the answers of the defendants.

A large amount of testimony was taken in the court below, bearing upon the question; and on the hearing a decree was rendered in favor of the complainant, that the defendant Loring held the title to one-third of the premises in question in trust for the complainant, and that the defendant Welch holds the same charged with the trust.

Record, p. 123.

It was further decreed that said trust was a vested interest in the complainant, subject to his payment of his proportion of the purchase money; and that the complainant made no "payment to the said Loring, which he directed to be applied, or which was by said Loring credited or applied specifically to and upon said purchase."

Ib.

It was thereupon ordered that it be referred to a special master to state an account between the said Loring and the said Palmer, embracing all their dealings.

Ib.

Under this order a very large amount of testimony was taken upon the accounting, occupying more than three hundred pages of the printed record. The report showed a small balance due from Loring to Palmer.

Record, pp. 130 to 446.

Exceptions were taken to this report of the master, and a hearing was had thereon, and a decree made confirming the same, and a final decree was entered in favor of the complainant.

Record, pp. 446 to 448.

From this decree an appeal has been taken to this court.

Record, pp. 448 and 449.

If, as the defendants claim, the complainant was not entitled to a decree as to the trust, then the accounting becomes of no consequence whatever, as that was merely incidental to the decree in favor of the complainant, in settling the detailed terms of the decree.

We shall therefore confine our discussion principally to the questions upon the merits and the complainant's right to a decree.

The bill goes entirely upon the ground of an express trust, as will be seen by the careful abstract thereof hereafter given.

It alleges that the agreement under which it is claimed the trust arises, was by a letter written by complainant to defendant Loring, in June, 1868, proposing to him that complainant should purchase the property of Mason, on the joint account of himself, Frue and Loring; that that proposition was accepted by Loring both by telegram and by letter; and that Loring made the contract of purchase with Mason in his own name as trustee, but without naming the *cestui que trusts;* and subsequently took the title in the same way.

The bill also avers that complainant furnished Loring with means to pay his proportion of the purchase money.

Amended bill, record, pp. 23 and 24, fols. 39 and 40.

There is no averment that the title was taken by Loring in fraud of complainant, or without his consent On the contrary it is averred that it was so taken by agreement.

Ib.

## I.

### LAW OF TRUSTS IN MICHIGAN.

It being therefore a case of express trust, if it is anything, let us inquire as to the law upon this subject, as it exists in the state of Michigan, where the land is situated.

In most of the states of the union the English statute of trusts, of Charles II, has been substantially adopted.

Under section 7 of that statute, trusts were to be "manifested and proved" by writing.

Brown, Stat. of Frauds, p. 78, sec. 79.
Forster vs. Hale, 3 Ves., 707.
Cook vs. Barr, 44 N. Y., 159.

Under this and statutes like it, it was not necessary that the trust should be *created* by writing. It was enough if it was so proved. Nor was any particular form required. It could be proved by letters, by an answer in chancery, and in any other informal manner.

Brown, Sec. 97.
Perry on Trusts, Sec., 79.
1 Greenleaf's Evid., Secs. 266 and 268.
Forster vs. Hale, 3 Ves., 707.
Steere vs. Steere, 5 John. Ch., 11.
Cook vs. Barr, 44 N. Y., 159.
Burrell vs. Jay, 16 Mass., 230.
McCollum vs. McCollum, 65 Me., 500.
Faxton vs. Folsom, 110 Mass., 307.
Kingsbury vs. Barnside, 58 Ill., 310.

But it was essential that the trust be set forth with great clearness, or, in the language of Chancellor Kent, "with absolute certainty as to its nature and terms."

Brown, Secs. 108 and 109.
Perry, Sec. 83.
2 Story, Eq. Juris., 979 a and b.
Forster vs. Hale, 3 Ves., 707.
Steere vs. Steere, 5 John. Ch., 11.
Cook vs. Barr, 44 N. Y., 159.
Wheeler vs. Smith, 9 How., 79.
Olcutt vs. Bynum, 17 Wall., 59.

Uncertainties will not be helped by parol testimony.

1 Greenleaf's Evid., 268.
Patton vs. Chamberlain, 44 Mich., 5.
Cook vs. Barr, 44 N. Y., 160 and 161.
2 Wharton on Evid., Secs. 920 and 921.

This doctrine of proving trusts has been entirely changed in Michigan by the revised statutes of 1846; which change went into operation March 1, 1847, and has been in full force ever since.

Rev. Stat. of 1846, 254.
2 Comp. Laws of 1871, p. 1330, secs. 4114 to 4124.
2 Howell's Stat. of 1882, p. 1446, secs. 5563 to 5573.

This statute was substantially adopted from the then existing statute of New York, with the exception of a single important clause, to which we shall call attention.

2 N. Y. Rev. Stat., 131.

By section 1, uses and trusts, except as authorized by this chapter, were abolished.

By section 7, when a grant was made for a valuable consideration to one person and the consideration is paid by another, no trust results in favor of the person paying the consideration.

But by section 9, section 7 was not to extend to cases where the alienee shall have taken the title in his own name without the knowledge or consent of

the person paying the consideration, or when it is done in violation of some trust.

Section 11 then provides for the creation of express trusts for the several purposes named therein, viz:

1st. To sell lands for the benefit of creditors.

2nd. To sell, mortgage or lease lands for the benefit of legatees, or to satisfy any charge thereon.

3rd. To receive the rents and profits and apply them to the use of a third person.

4th. To receive the rents and profits for the benefit of a married woman, or for certain other purposes.

Then comes the 5th provision, which is the material one, and which is not found in the statute of New York, and which is as follows: "For the beneficial interest of any person or persons, when such trust is *fully expressed* and *clearly defined* upon the face of the instrument *creating* it, subject to the limitations as to time prescribed in this title."

If any trust can be claimed in this case, it must be under and by virtue of this 5th subdivision of section 11.

We submit that it is entirely clear by that provision, that the trust must be "fully expressed and clearly defined upon the face of the instrument creating it;" and that it is not sufficient if the trust is created in some other way, and then is subsequently admitted by letter, or in any other manner. It must be *created* in writing in the manner pointed out by the statute.

The supreme court of Michigan do not seem to have had occasion to interpret this provision of the statute. It seems too clear to need interpretation.

In the court below, the counsel for the complainant referred to the fact that this provision had been copied into the statute of Wisconsin, and insisted that some decisions in that state had given an interpretation to this section at variance with what we now claim. We submit that there are no decisions that sustain any such view.

I have carefully examined all the Wisconsin cases referred to, and such others as I could find bearing upon the question, and I find no decision that in the slightest degree sustains that view.

The first case relied upon is that of White vs Fingal, 19 Wis., 480. In that case White had purchased some property of one Pelham, and the deed had been taken in the name of Fingal alone. Subsequently Fingal makes a declaration of trust, in which he sets up as follows: "The following is the property owned jointly by Fingal and White," and amongst others "19 acres on the lake shore." * * "The whole of the purchase money was paid by John I. White." But it declares that Fingal paid $50 towards the expenses.

It was held that this was a good and valid declaration of trust; and there can be no doubt upon the subject. But the clear implication is that this paper was the declaration that *created the trust.*

This case was approved in the subsequent one of Goodrich vs. Milwan, 24 Wis., 432, 436.

But it most distinctly recognizes the fact that the 5th subdivision of the section authorizing such declaration, (which is copied from our own), establishes a policy which is entirely different from that which prevails in New York; and by implication sustains our

view, that the trust must be fully expressed and defined upon the face of the instrument creating it.

Rev. Stat. of Wis., 2071, 2077 and 2091.

The language of the court in this last case, as well as in the first, clearly implies that the trust must be *created* by writing, not merely proved.

That this is the true view of the statute in question, is very clearly shown by some cases from the Maine reports.

The original statute of Maine upon this subject was copied from that of Massachusetts, and that from the English statute. And under it the trust need not be created by writing, if it was thus proved.

In 1841, the legislature passed an act upon this subject, which repealed the former statute, and which provided that the trust must be "created and manifested" by writing signed, etc.

Under this statute it was held that the trust must be created by writing, and not merely so proved.

Richardson vs. Woodbury, 43 Me., 212.

In 1857, this statute was revised, and it was provided that the trust must be created *or* declared in writing, etc.

The supreme court of Maine held, upon full consideration, that this was a radical change in the law, and that under this last statute, it was sufficient if the trust was declared by writing.

McCollum vs. McCollum, 65 Me., 518.

A somewhat similar change was made in the statute of New York. The original statute was like the English, providing for the proof of trusts by writing.

By the early revised statutes, it was provided that

no trust "shall hereafter be created," unless by operation of law, "or by a deed of conveyance in writing subscribed," etc.

Judge Earl, of the court of appeals, in commenting upon this statute, said:

"This was a statute providing, among other things, for the creation of trusts, and not merely like the English statute, for manifesting and proving them. It required that the trusts should be created by deed or conveyance subscribed by the party, and the only proof of them was such deed or conveyance."

Cook vs. Barr, 44 N. Y., 159.

By a subsequent statute, the law upon this subject was altered, and restored to its former condition; so that trusts could be proved by writing, and need not be so created.

It is entirely clear that under the Michigan statute, if one party advances the consideration for the purchase of real estate, and the title is taken in the name of another, there is no trust in favor of the party advancing the consideration.

Groesbeck vs. Seeley, 13 Mich., 345.
Waterman vs, Seeley, 28 Mich., 80.
Weare vs. Linnell, 29 Mich., 227.

It would be otherwise if the deed was taken in the name of the grantee by fraud, or without the knowledge of the person advancing the consideration.

Fisher vs. Forbes, 23 Mich., 454.

So, too, if there was a written contract made at the time, showing the trust.

Palmer us. Williams, 24 Mich., 330.

But an oral understanding that it should be held in trust would avail nothing.

Patton vs. Chamberlain, 44 Mich., 5 and 6.
Calder vs. Moran, 49 Mich., 14.
Bumpus vs. Bumpus, 53 Mich., 346.

The case of *Railroad Company vs. Durant*, 95 U. S., 576, relied upon by the complainant in the court below, is a very peculiar case; and we submit that it has no application to the case at bar.

The defendant, Durant, was the managing agent of the railroad company, and certain landowners proposed to convey to him in trust certain lands, upon condition of the location of the terminus of the road at a certain point.

The road was thus located through the agency of the defendant, and he took the deed in trust, without naming for whom, and then insisted that he owned the lands, and that if he held them in trust for any one, it was for the landowners, in case of the non-performance of the condition.

The railroad company brought the bill to have the lands conveyed to them. The opinion is very brief, and evidently goes upon the ground of fraud on the part of the defendant, and the authorities cited in the opinion look in the same direction. Precisely what the statute of Nebraska was, does not appear.

But one thing is entirely clear. If it is intended to hold, that under the statute of Nebraska, the payment of the consideration alone raised a trust, it cannot apply to the statute of Michigan; as the statute itself and the decisions already cited clearly show.

The authorities referred to by judge Swayne are not in conflict with our views.

The gist of the inquiry is, therefore, is the trust which is set forth in the bill, and which is attempted

to be proved by the testimony, "fully expressed, and clearly defined upon the face of the instrument creating it;" or, in the language of Chancellor Kent, is it expressed "with absolute certainty as to its nature and terms?"

We say there is no such trust, and this upon two grounds:

1st. No such trust is set up in the bill.

2nd. No such trust is proved.

## II.

### NO SUCH TRUST IS SET UP IN THE BILL.

To determine this it is necessary to look at its averments.

### ANALYSIS OF THE BILL.

Par. 1. In 1856, and for a number of years thereafter, Palmer, Loring and Frue were together engaged in the purchase of Upper Peninsula lands, the formation of corporations, and the purchase and sale of stocks of said corporations.

During this period such purchases and sales of lands and stocks were mostly made in the name of Loring as trustee, and the stock belonging to Palmer and Frue in the newly organized companies also stood in Loring's name as trustee.

This was done for convenience, and Palmer and Frue from time to time each paid to Loring large sums of money on account of said transactions.

Record, p. 23, fols. 88 and 89.

Par. 2. In June, 1868, Palmer, together with the said Frue, purchased of Thomas F. Mason, of New

York, the 120 acres of land particularly described, in Houghton county, Michigan.

"Said purchase was intended to be upon the joint account of said Loring, Frue and your orator, each sharing equally, provided the said Loring should desire an interest therein."

Loring, who was in Boston, had not been advised that the purchase was contemplated.

"Your orator agreed to pay for said land twenty thousand dollars, but as said Mason had not with him the form of land contract usually used by him, he declined to execute a formal contract for such purchase, until he returned to his home in the city of New York."

Ib., pp. 23 and 24, folio 39.

"A memorandum of the transaction was, however, made at the time, which was submitted to the said Mason, and by him assented to."

Palmer thereupon inclosed said memorandum to Loring, and directed him to obtain from Mason "a formal contract for the sale of lands, in accordance with the agreement with your orator in that behalf as aforesaid, and further proposing to the said Loring that said purchase be made upon the joint account of himself, Frue and your orator."

Ib., p. 24; folio 40.

Palmer received from Loring a telegram "accepting the proposition made to him as aforesaid, and stating that he had closed the contract."

Ib.

"And your orator received about this time letters by mail from said Loring, highly approving of said

purchase, and reiterating his acceptance of the proposition made to him as aforesaid."

The contract made by Loring with Mason is annexed, marked Ex. "A." See record, p. 27. It runs to Loring "as trustee; but it does not name the *cestui que trusts;* but the bill avers that it was executed to him as trustee, "in trust for the joint benefit of himself, the said Frue and yonr orator."

Record, p. 24, folio 40.

Par. 3. In the following July, Palmer, Loring and Frue met at Houghton, and agreed with each other, "that said lands should be held and owned by them jointly, the title standing in the name of said Loring as trustee in that behalf."

Alleges on information and belief that Frue had previously paid Loring enough, "together with moneys belonging to said Frue, then in the hands of said Loring, to pay his entire portion of the said purchase money."

Ib., p. 24, fol. 40.

In November or December following, Palmer and Loring had a consultation in Boston, in reference to providing funds to meet the remaining payments, and determined to sell stocks belonging to Palmer in Loring's name as trustee, and Palmer soon afterwards, prior to December 18th, sold stocks belonging to him, in Waterbury, Conn., for $15,000, and instructed Loring to draw upon the purchasers therefor, and Loring soon after the 18th informed Palmer that he had collected the money and paid Mason "the said installments upon the purchase." Charges this to be the fact.

Ib. pp, 24 and 25; fols. 40 and 41.

Loring then held stocks and securities belonging to Palmer, which were subsequently, early in 1869, sold by Loring, and upwards of $8,000 received by him on account thereof, and during the entire years 1868 and 1869 Loring "held in his hands moneys belonging to your orator, more than sufficient to pay all advances made by said Loring for your orator upon account of any and all transactions in which they were engaged, including the purchase made from said Mason as aforesaid."

Record, p. 25, fol. 41.

Par. 4. In March, 1869, Loring sent by letter to Palmer the contract made by Mason to him as trustee, to which contract was annexed a declaration of trust in Loring's handwriting.

Record, p. 25, fol. 41; p. 29, fol. 47.

Palmer avers that his interest is stated in said declaration as one quarter instead of one-third, but "that no modification or change of the terms of the original agreement for the purchase of said property was ever made by and with the consent of your orator, but that said change was made by said Loring upon his own motion."

Record, p. 25, fol. 41.

Par. 5. In May, 1869, Loring executed and delivered to Frue a deed for an undivided quarter of said property, a copy of which is annexed.

Record, p. 25, fol. 42; and p. 27, fol. 47.

At the same time an agreement was made between Frue and Loring giving to each the option of purchase in case the other should desire to sell; a copy of which agreement is annexed marked Ex. "C."

Record, pp. 25, 30 and 31.

Par. 6. In July, 1875, Loring conveyed to Charles A. Welch, in trust, for the purposes therein named, an undivided three-fourths interest in said lands. A copy of the deed is annexed, marked Ex. "D."

Record, pp. 25, 26, 32 and 33.

Avers that there is nothing in Loring's deed to Frue in any manner impairing Palmer's right in said lands, "and although your orator was advised of the execution of said deed shortly after the date thereof, he was not aware of the terms of the contract made concurrently with said deed between said Loring and the said Frue, of which Ex. "C" is a copy, until the month of June or July last past."

Record, p. 26.

Par. 7. Since final payment to Mason, in February, in 1869, Palmer has had no dealings with Loring, but has repeatedly endeavored to procure a final settlement of his account with him.

In October, 1871, Loring instituted against him a suit at law, but never brought the same to trial, and in June, 1874, discontinued said suit without notice.

"While your orator had for a long time feared that the said Loring was intending to cheat and defraud him of his interest in the lands hereinbefore described, he had no evidence thereof until July last past, when he learned of the deed executed by the said Loring to the said Welch." Said deed "in express terms asserts the ownership in and to an undivided three-fourths of said land as absolute, and not in trust for himself and your orator."

Has reason to fear that Welch will convey said

lands, and deprive complainant of his rights therein unless restrained.

Record, p. 26.

Par. 8. Complainant's interest in said lands is of the value of $20,000 and upwards.

Ib.

PRAYER OF THE BILL.

1st. An answer, but not under oath.

2nd. That said deed from Loring, so far as it conveys an undivided one-third of said premises belonging to complainant, may be decreed to be in violation of his rights; that Welch be ordered to convey to complainant one undivided one-third of said land; and and that in case of said Welch's neglect or refusal, the decree of the court may stand for a deed.

3rd. Injunction from conveying or encumbering said undivided one-third, pending the suit.

4th. Other or further relief, and injunction in that behalf.

5th. Subpœna to Loring and Welch.

Record, pp. 26 and 27.

A careful examination of the bill, or of the abstract of it, will show—

1st. That there is no such clear statement of the agreement as to the proportions of interest of the several parties, as to bring it within the rule mentioned.

Thus, in paragraph 2 of the bill it is set forth that the complainant and one Frue purchased of Mason the property in question, and that said purchase "was intended to be upon the joint account of said Loring, Frue and your orator, each sharing equally, pro-

viding said Loring should desire an interest therein."

It is not averred whose intention this was, or that it received any expression.

It is further averred in the same paragraph, that the complainant adressed a letter to Loring in the City of Boston, "proposing to the said Loring that said purchase be made upon joint account of himself, Frue and your orator;" and further, that he received a telegram accepting the proposition, and letters reiterating such acceptance.

The bill does not aver in terms the proportion of interest that each was to have; but it is claimed that in the absence of anything showing the contrary it will be presumed that the interest of each of the parties was equal, and that each was entitled to one-third of the property.

That this might be presumed in the absence of any other showing may be true. But in this case there are other portions of the bill which clearly indicate that such was not the arrangement.

Thus the purchase was made by Frue and Palmer, and the proposition was that Loring was to become jointly interested with these purchasers, Frue and Palmer. In other words, Frue and Palmer as one party were to have one-half, and Loring the other half.

That this was the understanding is made more clearly apparent by other averments in the bill.

After the contract of purchase was completed, and Loring had received the title from Mason, namely, in March, 1869, he inclosed the original contract to the complainant, and annexed thereto a declaration of trust, a copy of which is annexed to the bill, and very clearly shows what was Loring's understanding of the proportions of the several parties.

This declaration of trust is in Loring's own writing, and is bunglingly expressed; but it excludes the idea that either Palmer or Frue was entitled to more than one-quarter of the property.

See declaration, Ex. "A" of bill, p. 29.

This was received by the complainant, and there is no pretence in the bill that he made any protest against its correctness, although plaintiff avers that no modification of the original terms had been made.

But this is not all. In May following, as appears by the bill, Loring conveyed to Frue one-fourth interest in the premises, and the knowledge of this fact came to the complainant soon after.

Bill, pars. 5 and 6, pp. 25 and 26.

Complainant made no protest against this division of the property, as not being in accordance with the original agreement; and for many years, so far as shown by the bill, no further word passes upon this subject between the parties.

Taking the bill together we submit that the clear inference is that Frue and Palmer were to have one half of the property, and Loring the other half; although we admit that the whole matter is left in great vagueness and uncertainty. This very vagueness is fatal to the theory of a trust.

2nd. The bill does not set out any such declaration of trust as is required by the statute. No paper is referred to as containing such declaration, and all the averments that bear upon this question are those as to the correspondence between the complainant and Loring already referred to, and Loring's accepting the proposition contained in Palmer's letters by telegram and by letter.

We submit that there is no such distinct averment of a declaration of trust in these allegations as corresponds with the requirements of the statute.

## III.

We submit with great confidence that no such trust is proved as is set up in the bill.

The bill is brought to enforce an express trust, and as we have seen—

1st. This must be in writing.

2nd. It must be "fully expressed and clearly defined" by the instrument creating it.

3rd. Parol testimony is not admissible to supply any defects in the written instrument.

Of course, as in other cases, the writings are to be read in the light of surrounding circumstances, simply to ascertain the meaning of the language used, but not for the purpose of adding other words, or of substituting others for those used.

1 Greenleaf's Evid., Sec. 277.
Cline vs. Hubbard, 31 Mich., 237.
Oliver vs. Shoemaker, 35 Mich., 464.

It is claimed that the relations of these parties, and their previous business, throw some light upon the interpretation to be given to the papers that passed between them; and this may be true.

Frue, Loring and Palmer, had been engaged in Lake Superior business operations for many years previous to 1868, when the transaction in question occurred. Palmer says they commenced as early as 1854.

Palmer, p. 65.

He also says that from 1865, they had "generally the same equal interests," and owned mining stocks together, which were "generally in Loring's name."

They were large stockholders with others in a mining company, known as the Ossipee, in the success of which they were greatly interested.

Frue, pp. 44 to 46.
Palmer, p. 72.

The evidence shows that the land in question is so situated in relation to the Ossipee, as naturally to become a part of that mine, and that without this land the Ossipee could not become a perfect success.

Frue. pp. 46 and 47.

In June, 1868, Palmer and Frue were at Houghton, and met Mason, who owned the land in question, and an oral bargain was made with him for its purchase for twenty thousand dollars; five thousand dollars to be paid down, and two installments of seven thousand five hundred dollars each, in six and eight months.

Frue, pp. 42 and 43.
Mason, p. 57.
Palmer, pp. 55 and 56.

A written memorandum was made by Palmer, at the time; but Mason declined to sign it, as he preferred to use a form of contract of his own.

Ib.

Mason was then informed that Loring would have an interest in the purchase if he chose to.

Palmer, p. 66.

Subsequently, and within a few days, Mason executed an agreement with "Elisha T. Loring, trustee," for the sale of the premises upon the terms agreed

upon. Loring made all the payments to Mason, and on making the last payment, in February, 1869, received a deed running to himself.

Ex. "A," annexed to Bill, pp. 27 and 28.
Mason, pp. 57, 60, 63 and 64.

The bill is filed to have Loring declared a trustee for one third of the premises.

To make out a declaration of trust, for this share the bill relies entirely upon a single letter, written by Palmer to Loring, and the response to that letter by telegram and by letter, together with the fact that the contract was to "Loring, trustee."

See Bill, par. 3, pp. 23 and 24.

It further avers that in that letter Palmer inclosed the memorandum referred to, and instructed Loring to go to New York, and obtain a formal contract from Mason, "and further proposing to the said Loring, that said purchase be made upon the joint account of himself, Frue and your orator;" and that Palmer received from Loring a telegraphic message accepting the proposition, and stating that he had closed the contract, and also received from him letters reiterating his acceptance of the proposition made as aforesaid.

Bill, par. 3, p. 24.

It is true that the bill sets up that in March, 1869, Loring inclosed in a letter to Palmer, a declaration of trust, in the handwriting of said Loring. But this declaration is not relied upon; on the contrary it is repudiated.

Bill, par. 4, p. 25.
Letter of Palmer to Frue, April 6th, 1869. pp 54 and 55.

The answer of the defendant Loring was not called for under oath, and is signed by counsel only. It admits that the purchase was made of Mason, with the expectation that Frue and Palmer would be interested therein, "upon their paying their proportion of the purchase money."

It further admits that there was a correspondence between the complainant and Loring, in relation thereto, but as many of said defendant's letters and letter-books had been burned, he was unable to state the character of that correspondence, "or whether there was any definite understanding expressed thereby, in relation to the several interests that the said complainant, the said Frue and this defendant were expected to have in said purchase," and he therefore neither admits nor denies the correspondence set up.

Answer, pars. 2 and 3; pp. 34 and 35.

It is thus made entirely clear that the answer does not admit the trust or any declaration thereof, as set up in the bill.

EVIDENCE AS TO DECLARATION OF TRUST.

Let us now look at the evidence bearing upon the question whether there is any such declaration of trust in the correspondence mentioned and relied upon in the bill.

The only letter relied upon in the bill, as making the proposition to Loring "that said purchase be made upon joint account," which it is alleged Loring accepted both by telegram and letter, was the one inclosing the unsigned memorandum of the agreement with Mason prepared by Palmer at Houghton.

Bill, par. 2, p. 24.

This is the letter of June 19th, as is shown by its contents.

Ex. "G," pp. 68 and 69.

But Palmer had written a letter to Loring the day previous, June 18th, and as Loring's responses were to both letters, we will consider them together.

Ex. "F," pp. 67 and 68.

It will be seen upon examination that there is not a word in either letter about Loring's buying the land on "joint account," or of Loring taking any interest therein except as an owner of Ossipee stock.

The letter of June 18th, (Record, pp. 67 and 68), informs Loring of the purchase made of Mason and its terms, and desires Loring to see it carried out. Palmer then adds: "This matter is very important; the purchase will add to the Ossipee $5 per share at once in actual value." He advises Loring to go to New York and close this matter at once, and adds: "It is a fortune to us if well handled." He then describes the relation of this land to the Hecla Mine, and its value to that company, saying it "is worth more to them than the ground next to the Ossipee." He then closes with the expression: "The Hecla is rich, and we can make the Ossipee as rich."

It will be seen that there is no reference whatever to Frue's becoming interested in the matter, or to its being bought upon the joint account of Palmer, Frue and Loring. The whole purport of the letter is that it was to be bought for the benefit of the Ossipee, in which they and other persons were interested.

In the letter of June 19th, (Record, pp. 68 and 69), Palmer again describes the location of the premises, and refers to their importance to the Hecla, and says

that they would be glad to make an exchange with them. He then adds: "This is a great thing for Ossipee." And after expressing his great anxiety that it should be closed at once he says: "We must make a family concern of Ossipee, and I would not sell any stock in it; we can make it put on its own importance; this we will do; I see this matter clearly." He then in a postscript adds: "We shall have a Hecla of our own."

Here there is no reference to its being purchased upon the joint account of the individuals named, nor to the proportion which each was to have. But it is very clear that Palmer's plan was to have it purchased for the Ossipee.

It is in relation to these letters that Loring responded by telegram and by letter. These communications are not produced, as Palmer had lost them; but in relation to the letter he says: "Mr. Loring approved of this purchase, was very much pleased with it, and stated that he joined us in the purchase."

Palmer, p. 71.

Palmer also received a letter from Loring, dated the 27th of June, but which was not received until the 29th. It stated "that the contract was closed, and he started for the lake that day."

Palmer, p. 70.

This is the entire testimony tending to show a declaration of trust in the manner set out in the bill, namely, by the correspondence at the time of the purchase. Here is no such declaration as is averred in the bill, and as required by law.

The testimony of Frue and Palmer as to the interview in July, 1868, immediately after this pur-

chase, in which they claim that Loring admitted that the property was to be owned upon joint account, is entirely inadmissible, and cannot in the slightest degree affect this question of trust.

See cases cited ante.

The true theory of the transaction is that the object of Frue and Palmer in making this purchase was that it should be made for the Ossipee Mining Company, in which they, Loring and others were interested, and with which it was closely connected, and not on joint account.

Frue, pp. 44 to 46.
Palmer, p. 72.
Palmer's letters of June 18th and 19th, already mentioned, pp. 67 to 69.

Even as late as March 6th, 1869, Palmer still connects this purchase with the Ossipee, and says: "With the land in 23 Ossipee ought to sell."

Ex. "J," p. 77.

In case of such a purchase the land would be owned in proportion to the stock that each of the parties owned in the Ossipee. But this proportion nowhere appears.

But Loring, if he understood this purpose, did not fall in with it or assent to it; and he insisted that it should be the joint property of Frue, Palmer and himself; as is testified to by Frue and Palmer.

Frue, p. 46.
Palmer, p. 72.

While Loring refuses to hold the property for which he had contracted for the benefit of the Ossipee, he unquestionably expected that Frue and Palmer were to be interested with him in the property; al-

though this does not appear in any such way as to charge him with a trust in their behalf. But his testimony and the conduct of Frue and Palmer show very clearly that at the time the expectation was that Frue and Palmer were to be interested to the extent of one-fourth each, and that Loring was to have the balance.

Loring testifies that it was his understanding and expectation that Frue and Palmer were to be interested with him, "Frue to have one-quarter and Palmer one-quarter, each party paying his proportional part of the purchase."

Loring, p. 112.

That all of the parties acted upon the theory that this was the proportion in which the property was to be held, is entirely clear from the testimony.

Both Frue and Palmer considered the property very valuable.

Frue, pp. 46 and 47.
Palmer's letters of June 18th and 19th, 1868.

Palmer says it was worth $100,000.

Record, p. 88.

Each quarter was therefore worth $25,000; while a third would have been worth $33,333.33.

Frue had paid $5,000 towards the purchase, or one-fourth of the purchase money. Loring had been in doubt as to whether this $5,000 was applicable to Palmer's interest or to Frue's. Palmer says that he definitely informed Loring in October, 1868, and for the first time, that this $5,000 had been paid by Frue.

Palmer, pp. 91 and 101.

Frue, although he had abundant means, never

offered to make any further payment, nor made any application for an increase of his interest, which he clearly would have done, had he supposed that he was entitled to a one-third interest instead of one quarter.

He says that he had written to Palmer that he wanted something to show his interest in that property, but he does not seem to have stated the proportion to which he was entitled; merely saying in his testimony that he had paid the $5,000—which was one-fourth of the cost.

Frue, pp. 48 and 49.

On the 6th of March, 1869, he writes again from Houghton to Palmer, in Pontiac, and says: "You have neglected in your letter to mention anything about the paper asked for, showing my interest in the land purchased, and I would like to have you attend to it as soon as possible."

Palmer, p. 74.

Immediately upon the reception of this letter, and on the 8th of March, 1869, Palmer writes to Loring: "I wish you would send me a statement that Captain Frue owns one undivided quarter interest in the 120 acres, in section 23, as he has paid that amount."

Ex. "K," p. 78.

It will be noticed here that although Frue had not mentioned the proportion of interest, Palmer writes with entire confidence, that Frue's interest is one-fourth.

Loring at once, and on the 16th of March, writes to Palmer, inclosing a copy of the Mason contract, together with the declaration of trust which is attached to the bill, and which clearly refers to one-fourth as

the interest which the claimant or claimants were entitled to, and says of the declaration, "I trust it will meet your wishes."

Palmer, pp. 81 and 82.
Also declaration of trust, p. 29.

Palmer in his reply acknowledging the receipt of this paper, says: "I have sent the contract to Frue, who alone is the owner of the undivided one-fourth of 23."

Ex. 19, pp. 95 and 96.

On the same day, April 5th, 1869, Palmer writes to Frue, inclosing this copy of the contract and declaration of trust, and he says: "In this paper he mixes the quarter paid by you at Houghton with my interest, and seeks to put me off with a quarter interest when the property shall be sold."

Ex. "C," pp. 54 and 55.

Palmer again writes Frue upon the same subject on the following day, in the same strain.

Ex. "D," p. 55.

This declaration of trust was received by Frue through the agency of Palmer without a protest from either, and without any intimation that there was any understanding or had ever been, that Frue was to be entitled to any greater proportion.

It is true that Palmer, in the last letter to Frue referred to, claims that he is entitled to a still larger proportion; but upon what theory he was entitled to any greater proportion than Frue he does not state.

Loring testifies that when Palmer was in Boston, in December, 1868, it was agreed that the $5000 was to be applied to Frue's interest, and "that I should

hold three-fourths for myself, unless a further payment was made by him or Frue."

Loring, p. 112.

The conduct of the parties upon this question is much more satisfactory than their testimony after the lapse of many years, and especially when the witnesses Frue and Palmer have been engaged in bitter controversies with Loring.

This conduct of Frue and Palmer is utterly inconsistent with the theory that either of them was entitled to a greater interest than one-fourth. There is no ground for the pretence that Palmer was entitled to any greater interest than Frue, and no claim was ever made to Loring by either of them that they were entitled to any greater proportion.

This conduct, with Loring's positive testimony, seems to establish very clearly that if there was any definite understanding as to the proportions in which the parties were to be interested, it was that Frue and Palmer were to have one-fourth each, and Loring one-half.

But whatever may have been the understanding, it is very clear that there was no trust expressed and clearly defined by the instrument creating it, or by any instrument whatever.

We claim therefore upon the point just discussed, that the bill should be dismissed, upon the ground that no such trust as is set up in the bill has been proved.

## IV.

### AS TO DECLARATION OF TRUST OF MARCH 16TH, 1869.

It may be claimed that if the trust set up by the bill and sought to be proved cannot be established, the court should establish and enforce the written trust of March 16th, 1869, signed by Loring, and attached to exhibit "A" of the bill, notwithstanding the apparent disclaimer of that trust in the bill.

See Bill, par. 4, p. 25.

If this is claimed it will be upon the ground that that declaration refers to two distinct quarters of section 23.

We submit that this is a trust that cannot be enforced, for the simple reason that it has already been executed by the deed to Frue of the one-fourth.

Ex. "B" of Bill, p. 29,

That declaration of trust is in Mr. Loring's handwriting, and is not very clearly expressed, and is to be read in the light of surrounding circumstances, such as these:

The contract with Mason was made by Palmer alone, and not by Frue and Palmer. In the letters written to Loring at the time there is no intimation that Frue was to become interested in the property, unless it was as a stockholder of the Ossipee.

Exs. "F" and "G," pp. 67 to 69.
Mason, p. 57.
Ex. "A," p. 61.

On June 22nd, Palmer telegraphed to Loring that he had paid the $5000 for Mr. Loring, and so wrote Mason on the 27th of June.

Ex. "C," p. 62.

And he wrote to Loring on the 26th of June: "Frue and I have arranged to pay Edwards $5000 on the 4th of July, so that you can pay Mason $5000."

Palmer, p. 91.

Palmer says that in October for the first time he informed Loring that the $5000 was paid by Frue.

Palmer, pp. 91 and 101.

Loring says that this information was not given him until December.

Loring, p. 112.

Then followed in January and February thereafter the efforts hereinafter more fully stated, of Palmer to get Mason to extend the time for making the payment which fell due February 18th.

At this time Loring was exceedingly anxious that Palmer should either get this extension, or in some way raise the money to pay for his interest in section 23; and for this reason he writes with great earnestness the letters of February 3rd and 22nd already mentioned.

Ex. "17," p. 94.
Ex. "H," pp. 74 and 75.

He gets no response to these letters giving the slightest encouragement that Palmer could raise any money to pay for his proportion; but on the contrary, in his letter of March 6th, Palmer points out his embarrassed condition.

Ex. "J," p. 77.

And in his letter of March 8th, he requests Loring to send "a statement that Capt. Frue owns one undivided one-fourth interest in 120 acres of section 23."

Ex. "K," p. 78.

This letter excludes the idea that he expected or desired a statement, except in relation to Frue's one fourth, or that he expected to raise any money to meet the requirements of Loring's letter of February 22nd; and it is equivalent to an abandonment of all claim except as to that one fourth.

In response to this letter Loring writes the declaration of trust in question. He evidently was in doubt, and he might well have been, as to whether Palmer had or expected any interest in the quarter for which payments had been made.

Under these circumstances, and without professional advice, (as is apparent from the paper itself,) he acknowledges "that C. H. Palmer, or William B. Frue, one or either or them, jointly or separately, are the owners of the undivided one fourth part of said lands."

Ex. "A," pp. 28 and 29.

Immediately after these words, and a part of the same sentence and connected therewith, is the following: "And I hereby obligate myself, and my heirs and executors, to account to said Palmer or his assigns, for one fourth part received for the lands in question, whenever a sale shall be made of the same."

Ib., p., 29.

We think it entirely clear that this last clause was intended to relate, and does only relate, to the quarter already described, and that Loring used the words, "Palmer or his assigns," with reference to Frue's position, as the original contract was made by Palmer, and not by Frue.

We submit, therefore, that this declaration of

trust cannot be of the slightest avail to the complainant.

Even if its interpretation is not so clear as we claim that it is, yet under the doctrine already stated, it is not so clear a declaration of trust for two distinct quarters, that it can be enforced.

Nor is it such a declaration of trust as is relied upon in the bill.

## V.

### NO EVIDENCE OF TRUST.

Even if, under the statutes of Michigan, a trust could be "manifested and proved" by writing, without being "*created*" by a writing which fully expresses and clearly defines it, we say there is no such clear proof of a trust as the law requires.

Aside from the correspondence between Palmer and Loring, of June, 1868, already fully considered, there is nothing that tends to prove a trust and define its terms.

It is made clear by Loring's letters of February 3rd and 22nd, that he had expected and most earnestly desired that Palmer should have a share in this Mason purchase, on his furnishing his share of the purchase money, but upon no other terms.

Ex. "17," p. 94.
Ex. "H," pp. 74 and 75.

While these letters clearly indicate such an expectation and desire, they do not state the share it was expected Palmer would have, nor the terms of the trust, in case he had made the required advances.

We say therefore that the question whether the

trust must be created by the writing, or only manifested and proved by writing is entirely immaterial; for in either case there is no such evidence of trust as the well settled rules require.

## VI.

### PALMER MADE NO PAYMENT TOWARDS SECTION 23.

We attempted to show, and we believe have shown, that upon any theory there is no sufficient evidence of a trust in Loring, to authorize a decree in favor of the complainant.

But, even if this were otherwise, it is clear that Palmer never made a payment upon the purchase.

This the court so found in the original decree, as follows: "and that the said complainant has made no payment to the said Loring, which he directed to be applied, or which was by said Loring credited or applied, specifically to and upon the said purchase."

Record, p. 123.

We say that it is clear that such payment was a condition precedent to the complainant's right to any share in the property.

Loring testifies that he expected Frue and Palmer would each have a one fourth interest, "each paying his proportional part of the purchase money."

Loring, p. 112.

Frue testifies that he knew of no understanding by which Palmer was to have an interest without paying for it.

Frue, pp. 52 and 54.

The bill assumes this, in averring substantially that Palmer had fully paid for the interest claimed,

and describing the mode by which this payment was made.

Bill, par. 3, p. 25.

And it distinctly avers, that in November, or early in December, 1868, it was determined to sell Palmer's smelting stock, to meet the coming payments, and that it was sold for $15,000, and that Loring informed the complainant shortly after the 18th of December, that he had collected the money, and paid to Mason the said installments.

Ib., pp. 24 and 25.

It is not only not denied, but it is fully proved, that Loring paid Mason the entire purchase money, to-wit: $20,000 and interest.

Mason, pp. 58 and 59.
Loring, Ints. 9 to 12, pp. 113 and 114.

Of this sum, $5000 was paid to or for Loring by Frue; and for this Frue received the one-fourth interest.

It is not claimed that Palmer ever paid directly to Loring any money whatever to be applied upon this purchase.

But it is claimed that Loring had in his possession and name stocks which belonged to Palmer, and which under the direction and partly by the agency of Palmer were sold, and the proceeds of which came into Loring's hands for this very purpose; and that this was especially the case in relation to one thousand shares of smelting stock sold in Waterbury, Conn., for $15,000.

Bill, par. 3, pp. 24 and 25.
Palmer, pp. 79 to 82.

That this amount of stock belonging to Palmer was sold, and that the proceeds came to Loring's hands soon after the time when one of the installments of the Mason contract had become due, is fully admitted.

But while this is true, it is most satisfactorily shown that not one dollar of this sum was applicable to, or was applied, towards the purchase money of section 23.

To demonstrate this it is necessary to some extent to examine into the business relations of Palmer and Loring.

In 1868 and 1869, when this transaction occurred, Loring lived in Boston; Palmer lived in Pontiac, Michigan; and Frue in Houghton, Lake Superior.

For many years they had been operating together in mines, mining projects and stocks, in Lake Superior; and stocks owned by all of them stood largely in the name of Loring, in trust for the owners.

Bill, par. 1, p. 23.
Answer, par. 1, p. 34.
Palmer, p. 65.

Loring had also made from time to time large advances to Palmer, or on his account, as Palmer claims under an agreement; and had received from him a large number of notes which Loring had endorsed and from time to time paid.

Palmer, pp. 86, 87 and 89.

These transactions led to a very complicated state of accounts, and especially between Palmer and Loring.

We do not propose to show how these accounts

stood, but merely that they had no connection with section 23, which was a matter by itself.

1st. There was a land account in which many parties were interested, embracing matters connected with several distinct mining corporations.

Palmer, pp. 85 and 86.

2nd. There was a private account with Palmer, in which were charged moneys paid for him and he was credited with proceeds of stocks sold, etc.

Palmer, pp. 85 and 86.
Ex. "25," pp. 106 and 107.
Ex. "26," pp. 107 and 108.
Ex. "G," p. 116.

An important element in this private account grew out of payments by Loring of Palmer's notes—notes to a very large amount, usually for $5,000 each, signed by Palmer, and left with Loring for him to get discounted upon Loring's indorsement; and the proceeds were credited to Palmer, and when the notes were paid by Loring the amount was charged to Palmer.

See exhibits last above cited, and
Palmer, pp. 92-3, 94, 103-4 and 108.

Palmer says that these two accounts were at one time mingled, but they were afterwards separated. The accounts, however, were in their character entirely distinct.

Palmer, pp. 85 and 86.

3d. There was another matter in which there was an account entirely by itself. This related to 9,000 acres of land at L' Anse, for which Mr. Loring was trustee for Palmer.

Palmer, p. 104.

In relation to section 23 no account was ever made;

no charge to Palmer for advances; no credits for payments. This is most significant. There is not a scrap of contemporaneous paper indicating the relation of debtor and creditor as to this section 23.

Palmer, pp. 90 and 105.
Loring, p. 115.

The evidence that Palmer made a payment upon section 23 out of the proceeds of this smelting stock rests entirely upon his own unsupported testimony, and is so at variance with the established facts, and with his own conduct that it seems to convict him of willful falsehood.

He says that he was at Boston in December, 1868, and consulted with Loring about making the payment on section 23, which fell due December 18th; that he suggested to Loring to use his, Palmer's, notes; that Loring said he could not; "and as last resort suggested the selling of my smelting stock, to which I consented for the purpose of making that payment."

Palmer, p. 79.

And again, he says the sale "was made for the purpose of paying my interest in 23, as well as to help Mr. Loring also."

Palmer, p. 81.

He further says that $5,000 of the purchase money was deposited in New York, December 18th, the very day that the payment to Mason became due; and by implication he asserts that the same money was paid to Mason.

Palmer, p. 81.

He knew at the time that this was not so; for Loring wrote him from Boston on the 18th, directing how

this $5,000 should be deposited, and it was not in fact paid until the 21st.

Ex. "13," p. 93.
Ex. "G," p. 116.
Loring. pp. 113 and 114.

Loring had remitted the entire payment upon the Mason contract from Boston on the 17th, and it was received in New York on the 18th.

Mason, p. 59.
Ex. "E," p. 63.

There is no suggestion in Palmer's testimony upon this point that he was under any obligations to raise money to aid Loring, or that he sold this stock for any other purpose than to pay his portion of section 23, and to kindly assist Loring.

Unfortunately for Mr. Palmer he had forgotten that on the 25th of November, Loring had written to him, urging him in the strongest language to raise money, not to make a payment on section 23, but to enable him to meet Palmer's notes falling due the middle of December, and suggesting that Palmer should come east by way of Waterbury and sell these very stocks.

Palmer, p. 91.
Ex. "4," pp. 91 and 92.
Loring, int. 7, p. 113.

This very suggestion he falls in with, comes east and sells the stock and turns the proceeds over to Loring. And Loring distinctly testifies that in the interview in Boston nothing whatever was said about applying any portion of the proceeds upon the Mason contract. On the contrary they were to be applied to his own account.

Loring, int. 8, p. 113.

This very $15,000 was credited by Loring to Palmer, and within a few days, on general account, and the account was sent to Palmer showing these credits, and Palmer saw nothing to except to, and made no objection.

Ex. "25," pp. 106 and 107.
Palmer, p. 108.

This was an account stated, and no objections being made thereto within a reasonable time, it became strong evidence, as against Palmer, of its correctness.

Story's Equity, Sec. 526.
Wiggins vs. Burkham, 10 Wall., 129 and 131.

During all this time, and up to September, 1869, it is entirely clear that both Loring and Palmer assumed that Palmer was largely the debtor, notwithstanding Palmer's remarkable testimony, that there was a balance due him of from ten to twenty thousand dollars.

Palmer, pp. 86 and 87.

This testimony was given before the accounts had been put in evidence; and after that he qualifies it in a very marked manner, and thinks that, with all proper credits, the account would be paid.

Palmer, p. 108.

The indebtedness of Palmer during this period is fully shown:

1st. By the accounts already mentioned.

2nd. By Palmer's own agreement of December 30th, 1868, to pay two notes of his on the 8th and 12th of March following of $5,103 each, from other resources than the securities then in Loring's hands.

Ex. "14," pp. 93 and 94.

3rd. By the corespondence between the parties which is here referred to :

Ex. "17," Loring to Palmer, Feb. 3d, 1869, p. 94.
Ex. "J," Palmer to Loring, March 6th, 1869, p. 77.
Ex. "18," Loring to Palmer, March 23d, 1869. p. 95.
Ex. "19," Palmer to Loring, April 5th, 1869, pp. 95, 96.
Ex. "20," Loring to Palmer, June 8th, 1869, pp. 96, 97.
Ex. "21," Palmer to Loring, June 10th, 1869, pp. 97 and 98.
Ex. "23," Loring to Palmer, Sept. 4th, 1869, pp. 98, 99.
Ex. "24," Palmer to Loring, Sept. 18th, 1869, pp. 99, 100.

This correspondence fully shows Palmer's deep embarrassment, and his belief that he was largely indebted to Loring.

Some of the statements of account do not show the extent of this indebtedness, as Palmer's notes indorsed by Loring, were not charged in account until Loring had paid them.

This same view of their relations is fully sustained by the positive testimony of Loring.

Loring, Int. 18, p. 115.

There is not a contemporaneous statement in writing, that indicates that Palmer had paid a dollar towards section 23. On the contrary, the correspondence seems to prove directly the reverse.

Palmer's claim now is that his proportion of section 23 was to be paid for by the $15,000 received from the smelting stock. This was all paid in December, 1868 ; yet when the last payment thereon of $7,500 and interest was about to become due, namely, February, 1869, we find him applying to Mason for an

extension of time for his benefit, as shown by a letter from Mason to Loring, dated January 30th, in which he states that he had received such a letter from Palmer, with the request that he should write to Loring, and closes by saying in relation to the proposition: "I prefer not to do so."

Ex. "1," p. 64.

Loring immediately writes to Mason for something a little more explicit, and on the 2nd of February, Mason again writes to him that he gave Mr. Palmer no encouragement that he would extend the payment, and declines to do so.

Ex. "2," p. 64.

Mr. Loring receives this, and on the 3rd of February writes to Palmer, informing him of Mason's decision, and regretting it, as it was difficult for him to raise the money to meet the payment, as he had to provide money to pay $15.000 of Palmer's notes that month, and saying that he had really been in hopes that Palmer would find some one to help him "on terms that you could retain for yourself a large interest in 23."

Ex. "17," p. 94.

It is made very clear from Loring's letter to Palmer, of February 22nd, that Palmer had written to Loring, on the reception of this letter of February 3d, requesting him to propose to Mason some new or different arrangement, by which Palmer should sell a thousand shares of Ossipee to Mason, who should retain a one third interest in section 23, Loring taking a third, and Frue and Palmer together another third.

Ex. "H," pp. 74 and 75.

Mason declines this proposition, and so writes Loring on the 15th of February.

Ex. "3," p. 64.

These negotiations are utterly inconsistent with Palmer's claim of having paid his portion of the purchase money of section 23 to Loring, in December.

These efforts of extension of time having failed, Loring paid the balance due to Mason, took a deed and wrote to Palmer the letter already referred to, of February 22nd.

This letter shows most clearly that Loring was extremely anxious that Palmer should advance his proportion of the purchase money, so as to relieve himself from his existing embarrassment; and he then gives Palmer formal notice that if he wishes to secure an interest in section 23, he must remit the amount of the cost, prior to the 20th of March, "otherwise I shall consider as mine and retain the three fourths interest in section 23 which I have paid for."

Ex. "H," pp. 74 and 75.

Palmer acknowledges the receipt of this letter, and makes a most remarkable statement in relation to a supposed reply thereto on the 26th of February.

He does not undertake to swear that he did write such a letter, but his testimony is that he finds upon the envelope of that letter an indorsement in the following words: "I have been willing to unite in any plan to mutually aid us, but failing in this cannot consent to lesson my interest in section 23."

Palmer, pp. 76 and 77.

He then testifies: "I probably wrote a letter and in accordance with that; but I do not remember the contents of the letter."

Ib.

Loring testifies that he never received any such letter.

Loring, Int. 14, p. 114.

It is very significant that in this memorandum Palmer makes no pretence that he had paid for any portion of section 23.

On the 6th of March Palmer writes to Loring, speaking of his financial embarrassments, and instructing him to sell his Hecla stock, and complains that since "last spring I must say at no period of my life have I begun to suffer so much as I have from that time."

Ex. "J," p. 77.

On the 8th of March, he again writes to Loring, requesting him to send a statement that Frue owned an undivided one-fourth of section 23.

Ex. "K," p. 78.

It is very remarkable, if Palmer then claimed that he had paid for his share, that he did not ask Loring for a statement in relation to his interest; for he was as much entitled to such a statement as Frue.

This correspondence is utterly inconsistent with Palmer's present theory.

But the most remarkable piece of testimony yet remains.

Palmer testifies that on a separate piece of paper he added a postscript to the letter of March 8th, last referred to, which was inclosed with it. And he furnishes a copy in his own handwriting with a certificate of his daughter, Virginia Palmer, that it was inclosed in a letter directed to E. T. Loring, etc.

Ex. "L," pp. 78 and 79.

In that pretended postscript he claims that since writing the original letter he had referred to Loring's letter of February 22nd, and says that he cannot consent to Loring's holding the three-fourths of section 23, and claims that he sold smelting stock "to aid both of us in securing our interests in the most valuable purchase we have made."

He then calls upon Loring to apply "to my interest any means in your hands belonging to me."

Ex. "L," pp. 78 and 79.

We have already seen in Palmer's pretended memorandum of February 26th, that his attention, if we may believe him, had been specially called to Loring's claim of retaining three-fourths if Palmer did not pay his proportion by March 20th.

That this postscript is fictitious is very clear.

1st. The statement in it of his selling smelting stock to aid himself and Loring to secure the interests in section 23, is clearly false, as we have shown.

2nd. Loring swears in the most positive manner that he never received this paper, although he did receive the original letter.

Loring, Int. 15, p. 114.

And this view is sustained by the fact that Loring, in his reply to the letter, makes no allusion to the postscript, which he would have done had it been sent.

Record, Ex. "M," p. 81.

Then, too, had Palmer written that postscript, so utterly different in its tone from all his other letters, he would have been indignant upon receiving Loring's reply of March 16th, in which Loring not only makes no allusion to the postscript, but incloses a declaration

of trust of that date utterly at variance with the tenor of the postscript, saying at the same time: "Enclosed, I forward the bond given by Mason with an indorsement that I trust will meet your wishes."

But instead of expressing disappointment or indignation at this remarkable reply, Palmer acknowledges the receipt of the letter and declaration, without making the slightest objection thereto, and by his silence tacitly approves the same.

Postscript, p. 82.
Letter of April 5th, pp. 95 and 96.

3rd. The testimony of Palmer and his daughter in relation to this postscript is utterly at variance upon a most material point.

Palmer swears most positively that the postscript was inclosed with the original letter.

Palmer, p. 78.

Virginia Palmer, on the other hand, testifies that there there was nothing else written but the postscript; that that was the whole of the letter; and that it was put into an envelope by itself, without any other paper.

Virginia Palmer, p. 111.

On re-examination they attempted to refresh her recollection, but did not succeed.

Ib., p. 111.

It is very clear that Palmer was not in the habit of keeping copies of his letters. The copy and the certificate that it is a copy, and when sent, are all in his own handwriting, and Virginia Palmer simply signs her name to the certificate, and swears that she thinks it was sent at the time; of course she can have no re-

collection of dates except from the paper itself; and it is evident that it was a subsequent concoction.

We have spent a good deal of time upon this head of the case: that Palmer paid nothing towards the purchase of section 23—much more than was needful for the merits of the case; but we deemed it desirable for the purpose of showing the character of Palmer's testimony and his reckless manner of swearing.

## VII.

### LACHES.

If Palmer ever had any claim to the redress he now seeks, we submit that he has lost it by laches.

### FACTS.

The facts bearing upon this question are as follows:

1st. There is no pretence that Palmer was entitled to any interest in the land in question without paying for it, and this in advance.

The bill assumes this, as does the entire correspondence that has been referred to, and this was the understanding of both Loring and Frue, as they testify.

Loring, p. 112.
Frue, p. 54.

2nd. Palmer disclaims having made the payment of $5000, as he says that was made by Frue, although at first he claimed that he made it.

He made no payment towards the first installment, due the 18th of December, 1868.

We have shown—

a. That the smelting stock sold in December, 1868, was sold for another and distant purpose, and

in accordance with the suggestion of Loring in his letter of November 25th: namely to provide funds to meet the payment of Palmer's own notes indorsed by Loring.

b. The whole of this purchase money, $15,000, was applied to this purpose for which it was sold, and credited by Loring to Palmer on his private account.

c. An account showing this application and a credit to Palmer of the whole amount was sent to Palmer by Loring, about the 1st of January, 1869, which he received, saw nothing to except to, and therefore approved.

3d. There is no ground for a pretence that Palmer furnished any funds directly or indirectly to meet the last payment upon the Mason contract, falling due February 18th.

a. Knowing his obligation to provide funds for that purpose if he expected an interest in the purchase, he earnestly sought, both directly to Mason and through Loring, to have this payment deferred, as we have fully shown by the correspondence that passed upon this subject.

b. Loring was extremely anxious that Palmer should make these advances, to aid him in meeting this February payment, as he was himself greatly embarrassed, and did not desire a greater interest in the property.

This is very fully shown by Loring's letter to Palmer, of February 3d, 1869, after the negotiations mentioned had failed. He expresses his regret at Mason's decision, and says that he had entertained hopes that Palmer "could retain for yourself a large interest in section 23."

Ex. "17," p. 94.

c. Loring made the entire payment and obtained a deed to himself of the property, and writes to Palmer the letter of February 22nd.

Ex. "H," pp. 74 and 75.

He expresses his bitter disappointment at Mason's not consenting to the postponement and relieving him, Loring, from the necessity of raising the whole amount due; but informs him that he had done it and obtained the deed.

He further says: "I therefore deem it my duty and as an act of courtesy towards you to notify you that whatever additional portion you wish to acquire for yourself in section 23, it will be necessary for you to remit the amount of the cost of such additional portion as you desire prior to the 20th of March; otherwise I shall consider as mine and retain the three fourths interest in section 23 which I have paid for."

Palmer admits that this letter was received as early as the 26th of February.

As we have already seen, he made no direct response thereto; but on the 8th of March, he writes a letter expressing strongly his own great embarrassment, but says nothing of making any effort to meet payment; nor does he in the slightest degree object to Loring's claim to retain the whole if the money was not paid.

See Ex. "J," p. 77.

And on the 8th of March, he again writes to Loring for a statement that Capt. Frue owns a one-fourth interest in the property and has paid for the same; but he makes no claim that he had paid anything thereon or is entitled to any interest therein, nor any suggestion

that he expected to meet Loring's condition expressed in his letter of February 22nd.

Ex. "K," p. 78.

We have already seen that the pretended postscript to that letter was a fiction, and was never received by Loring.

In response to this letter, Loring, on the 16th of March, incloses the declaration of trust, annexed to the bill, relating to the one-fourth.

Ex. "M," pp. 81 and 82.

The 20th of March passes, and no effort has been made to meet the payment as required; nor is there in all the correspondence that has been proved a single objection made to Loring's position that after that the three-fourths of the property in question would belong to him.

Nor did Palmer after this ever make any claim to Loring in relation thereto until filing the bill.

Loring, p. 115.

We submit that these facts and this correspondence show most clearly that Palmer, after the 22nd of February, made no claim whatever to any interest in section 23; thus conceding the correctness of Loring's position; and that from that time up to the filing of the bill, nearly seven years thereafter, he never uttered nor intimated a claim of an existing interest in the premises.

In the meantime the Hecla Mine had become one of the richest in the world, and this property had become valuable, and in December, 1875, Palmer files this bill.

This court has repeatedly laid down the rule, that

where there has been apparently gross laches in filing the bill, the complainant "should set forth in his bill specifically what were the impediments to an earlier prosecution of his claim."

Badger vs. Badger, 2 Wall., 95.
Marsh vs. Whittemore, 21 Wall., 185.

The complainant, being conscious that his long delay made it necessary for him to show cause therefor, attempts in his bill to excuse his laches upon three distinct grounds:

1st. On the ground that since the final payment on the property in question, in February, 1868, he had had no dealings with Loring, and had "repeatedly attempted to procure an adjustment and final settlement of his account with him, but has been unable to do so."

2nd. That in October, 1871, Loring instituted a suit at law against complainant, but never brought the same to trial, and in June, 1874, discontinued said suit.

3rd. "That while your orator had for a long time feared that said Loring was intending to cheat and defraud him of his interest in the lands" * * "he had no evidence thereof until July last past, when he learned of the deed executed by said Loring to the said Welch." He further avers that said deed in express terms asserts the ownership of the three-fourths interest of land in Loring.

The first ground is simply false, and was known to be so by Palmer, when he swore to the bill.

The evidence abundantly shows that his dealings and correspondence with Loring continued up to September, 1869.

On the 4th of September, 1869, Loring writes to Palmer informing him that on the 28th of August he had paid for him the last of his notes, and encloses an account showing a balance against Palmer of $15,-761.67; and he informs him in distinct terms that this account must be settled at the latest by the 1st of September, 1870.

See Ex. "23," pp. 98 and 99.

On the 18th of September, Palmer replies to this letter, and says: "I shall try and come up to your views by making payment by September, 1870; I shall do all I can."

Ex. "24," pp. 99 and 100.

Nor is there a particle of evidence that Palmer ever attempted "to procure an adjustment and final settlement of his account."

As to the second excuse there is no allegation in the bill, and no evidence whatever, that the suit at law commenced by Loring against Palmer had any relation whatever to the land in question or the matters in dispute growing out thereof.

As to the third cause assigned, there can be but one meaning to the language used, namely, that while Palmer had for a long time feared that Loring intended to claim what he calls his interest in the lands, yet he had no evidence thereof until Loring made the conveyance to Welch, in July, 1875.

This was utterly false, and Palmer must have known it when he swore to the bill.

After Palmer had failed to furnish funds to aid in paying the last installment to Mason, and Loring at a great sacrifice had raised the needful funds, he

wrote to Palmer on the 22nd of February, 1869, a very full and frank letter upon the whole subject, and he distinctly informs him that unless he remits the amount of the cost of the share he wished to secure, prior to the 20th of March, "I shall consider as mine, and retain the three-fourths interest in section 23, which I have paid for."

Ex, "H." p. 75.

This letter was received by Palmer in due course. So that from that time he had notice that after the 20th of March, if he made no payment, Loring would consider the land all his own. It is startling that Palmer could swear to such an averment as is contained in the bill; for he virtually swears that a claim of ownership which was notice to him in a deed to another person, was not notice when given to himself directly.

This question of laches is distinctly set up in Welch's answer to the bill, although as we have seen, that was not necessary to enable us to raise the question.

Welch's Answer, p. 39.

We submit, therefore, that upon this state of facts the complainant has been guilty of inexcusable laches, in not commencing his suit within reasonable time after Loring had given him full notice that he should claim the whole of this property as his own.

It is admitted that a *cestui que trust* has a right to presume that a trustee will do his duty, and perform the trust committed to him; and he is not guilty of laches, nor will the statute of limitations run against him, until he has notice that the trustee does not propose to carry out the trust.

But when he is distinctly notified by his trustee that he disavows the trust, the rule of laches, or the statute or limitations, runs from that time.

Angel on Limitations, Sec. 174.
Kane vs. Bloodgood, 7 John. Ch., 89.
Keaton vs. Greenwood, 8 Ga., 97.
Moffat vs. Buchanan, 11 Humph., 369.
Grumbles vs. Grumbles, 17 Tex., 472.

LAW.

Perhaps no rule of law is better settled than that which governs courts of equity in relation to laches. The language of Lord Camden, in Smith vs. Clay, has been quoted so often that it has become classical: "A court of equity, which is never active in relief against conscience or public convenience, has always refused its aid to stale demands where the party has slept upon his rights and acquiesced for a great length of time. Nothing can call forth this court into activity but conscience, good faith and reasonable diligence. Where these are wanting the court is passive and does nothing."

2 Story's Equity, Sec. 1520 and note.

This rule has been frequently stated, and either in terms or in substance approved by this court.

Badger vs. Badger, 2 Wall., 94.
Sullivan vs. Portland R. R. Co., 94 U. S., 811.

It is equally clear that there is no arbitrary rule as to the lapse of time that will constitute laches. As was said by Judge Swayne: "Every case is governed chiefly by its own circumstances. Sometimes the analogy of the statute of limitations is applied. Sometimes a longer period than that prescribed by the

statute is required; in some cases a shorter time is sufficient; and sometimes the rule is applied where there is no statutable bar. It is competent for the court to apply the inherent principles of its own system of jurisprudence and decide accordingly."

Sullivan vs. Portland R. R. Co., 94 U. S., 811.

Or, as was more briefly said by Judge Hunt: "The delay which will defeat recovery must depend upon the particular circumstances of each case."

Hammond vs. R. R. Co., 17 Wall., 81.

And the same principle has been applied in admiralty cases.

As Judge Miller said: "The delay which will defeat such a suit must in every case depend upon the peculiar equitable circumstances of that case."

The Key City, 14 Wall., 660.

And the same general principle as to laches is established by many cases.

Campau vs. Van Dyke, 15 Mich., 378.
Royal Bank vs. G. J. R. R. Co,. 125 Mass., 494.
Davison vs. Associates, 71 N. Y., 339.
Smith vs. Washington. 11 Bro., App., 519.
Clegg vs. Edmondson, 8 De G., M. and De G., 808.
Bliss vs. Pritchard, 67 Me., 181.
Hart vs. Clark, 19 Bev., 349.
Wentworth vs. Lloyd, 32 Bev., 467.

These rules are alike applicable to express and resulting trusts.

Perry on trusts, Secs., 228 to 230.
Badger vs. Badger, 2 Wall., 87.
Clegg vs. Edmondson, 8 De G., M. and De G., 808.
Hart vs. Clark, 19 Bev., 349.
Wentworth vs. Lloyd, 32 Bev., 467.

It will be seen upon examining the cases cited upon this general subject, that the time of the delay which has been held to constitute laches, has been sometimes as low as 3, 5 and 6 years; while in some instances even a delay of 30 years is not considered laches.

In this case there is no possible excuse for any delay whatever beyond a reasonable time after the 22nd of February, 1869, when Loring made known that he disclaimed the trust, if payment was not made by the 20th of March.

CONCLUSION.

We submit, therefore, that we have clearly made out four distinct defences to the bill.

1st. The bill itself does not set out a trust which can be enforced under the statute of Michigan, which requires the trust to be "fully expressed and clearly defined upon the face of the instrument creating it."

2nd. That no trust is established by the evidence.

3rd. If any trust had been set out or shown, still it could not have been enforced, for the reason that the complainant never paid or tendered to the defendant Loring his proportion of the purchase money, and this was a condition precedent.

4th. The complainant has been guilty of great laches, in delaying the filing of this bill for more than six and a half years after Loring had distinctly given him notice of his repudiating the trust, if any ever existed.

C. I. Walker
Solicitor for
Appellants.

FILED
MAR 16 1886
JAMES H. MCKENNEY,
CLERK.

118-321

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1885.

No. 1365.

ELISHA T. LORING AND CHARLES A. WELCH,
*Appellants,*

*against*

CHARLES H. PALMER,
*Appellee.*

## BRIEF FOR APPELLANTS.

JOSEPH H. CHOATE,
*Of Counsel.*

IN THE

# Supreme Court of the United States.

| | |
|---|---|
| ELISHA T. LORING AND CHARLES A. WELCH, *Appellants,* *against* CHARLES H. PALMER, *Appellee.* | No. 183— October Term, 1885. |

*Appeal from the Circuit Court of the United States for the Eastern District of Michigan.*

## BRIEF FOR APPELLANTS.

### Statement of Facts.

This bill was filed in December, 1875, to enforce as against the defendant Loring (the *appellant* here), as trustee, an alleged express trust in favor of the complainant (the *appellee* here), in one-third of a certain parcel of land, called section 23, consisting of 120 acres, situated in the State of Michigan, and particularly described in the bill. The defendant Welch was joined as a party, as a purchaser with notice from Loring.

The bill declares for an *express trust* in the lands acquired by the defendant Loring, to the extent of an equal undivided third, for the benefit of the complainant Palmer. The case was tried and decided solely upon the theory of an *express trust*, and every other form of trust or right of action was expressly disavowed in the Court below.

The bill presents the following theory of the alleged

trust: That for many years prior to 1868, the complainant and Loring and Frue had been engaged in joint enterprises in the purchase of lands and stocks in Michigan, and that such purchases were, for the most part, made in the name of Loring, as trustee. That at that time the complainant and Frue, being in Michigan, where they resided, found the piece of land in question, and, deeming it a desirable purchase, negotiated for it with the owner, Mason, and between them the price and terms were arranged; but that Mason, having a peculiar form of contract on which he insisted, in New York, where he resided, no agreement was then consummated. That it was understood between them that Loring, who was in Boston, where he resided, should be requested to make a contract in writing with Mason for the purchase of the property, which was accordingly done; the bill alleging that the complainant wrote Loring, enclosing a memorandum of the transaction, and instructing him to obtain from Mason the formal contract for the sale of the land, and further proposing to Loring that such purchase be made upon the joint account of himself, Frue, and the complainant, and that Loring telegraphed and wrote in reply that he accepted the proposition and had closed the contract. Finally, that the contract was taken in the name of "Loring, trustee" (p. 23–24).

Thus the contract itself, and the correspondence passing between the parties by mail and telegraph, immediately before and after its execution, are the only *writings* declared upon for the original creation, or for the proof or manifestation, of the alleged trust.

The bill further relies upon an alleged *oral* agreement between the three parties, subsequent to the contract, to the effect that the property should be held and owned by them jointly and the title stand in the name of Loring, as trustee, and also upon the alleged execution by Loring of a declaration of trust as to one-fourth part of the property, but which the bill repudiates as to Palmer's proportion, and which was proved and found by the Court below to have related only to the one-fourth interest for which Frue had paid $5,000, one-fourth of the purchase money (p, 24, 25).

In further support of the allegation of a trust, the bill

alleges that, between the date of the contract and the date stipulated for payment therein, to provide funds with which to pay for the share of the complainant, certain stocks belonging to the complainant, standing in the name of Loring, were, by his orders, sold, and the proceeds paid to Loring, and by him applied in payment for the property. As these allegations were found by the Court below to be false, for the decree expressly finds that—

> "The complainant has made no payment to the said Loring which he directed to be applied, or which was, by said Loring, credited or applied specifically to and upon said purchase" (p. 447)—

and as the allegations must have been *known by the complainant to be false* at the time of the filing of the bill, the particular attention of the Court is called to them. They are contained in paragraph 3 of the bill (p. 24–25).

The answer of the defendant Loring admits prior joint operations between the parties, all of which are claimed to have been closed; admits that the oral contract was made by the complainant with Mason, for the purchase of the lands; that he was requested by letter to enter into a written agreement with Mason for the completion of the purchase; that correspondence took place between the complainant and Loring, in consequence of which the defendant Loring made the contract with Mason for the purchase of the land, binding himself to pay the full consideration of $20,000; and that he paid the same and took the title to the property. The answer also admits the expectation that Frue and the complainant would become interested in the purchase, upon paying their respective proportions of the purchase money; that Frue did so pay $5,000; and that that is all that has been paid by any one but the defendant on account of the purchase (p. 34–36).

The answer expressly denies the allegations of the bill as to payments by Palmer, and as to the alleged applications of stocks and their proceeds to such payments. It further alleges that Palmer, being unable to pay any part of the purchase money, consented to give up all interest that he had expected to have in the land, and

that the defendant should acquire and own the whole, except the portion represented by the $5,000 paid by Frue (p. 35–36).

The answer explains that the declaration of trust annexed to the bill was sent in response to a request from the complainant that the defendant would send a statement that Frue owned an undivided one-fourth interest in the land which he had paid for, and that it was intended to apply to that quarter alone. It denies the trust in every form, denies that complainant has any interest whatever in said lands, and alleges specifically that the complainant is not entitled to a decree, because, among other things, said alleged trust was not so reduced to writing as to authorize the enforcement thereof, and "because the trust attempted to be set up is not one that can be enforced under the statutes of Michigan in relation to uses and trusts" (p. 36–37).

The answer of Welch sets up the *laches* of the complainant, denies any notice of any alleged equities on his part, and denies that complainant has any interest in said lands (p. 38–39).

Under these pleadings, the evidence contained in the record establishes facts which, for the purposes of this appeal, may be very briefly stated.

There had been, for years, prior transactions between the parties and Frue, mostly of a speculative character—dealings in mining lands, mining stock, and the organization of companies for mining purposes—and, in some of these transactions, property was taken for the parties, and for the companies organized by them, in the name of Loring (Ans., p. 34; pp. 42 and 65). Among others, there was thus formed the Ossipee Mining Company, in which all three were interested, but not equally; nor were they the owners of the whole property. Exhibit No. 14, page 152, shows that the stock consisted of 20,000 shares, and that of these Loring and Frue were original stockholders of 2,250 shares each, and Palmer, 2,220.

This being the relation of the parties, and Frue and the complainant living in Michigan, and the defendant Loring in Boston, the former found the property in question, a section of land *immediately adjoining the famous Calumet and*

*Hecla Mines*, which was, in its nature, of a highly speculative character. The complainant and Frue, considering that, as the land lay between the properties of the Calumet and Hecla and the Ossipee companies, it would be of vital advantage to the Ossipee Company, as a means of trade and competition with the Calumet and Hecla, bargained with Mason for it, and came to terms with him for the price of $20,000, payable $5,000 down and the balance in two instalments, at six and eight months from the 18th day of June, 1868, the date of the *oral* negotiation. The sole intention of complainant and Frue in this negotiation was to purchase the property for the Ossipee Company. Mason, the owner, having in New York, where he resided, a favorite form of contract for land to be paid for in instalments, which provided a strict forfeiture of the contract and all the moneys paid under it, in case of the non-payment of any instalments, refused to enter into any binding agreement with the complainant; but they parted with the understanding that Loring, at the request of the complainant, would make the contract with Mason in New York, and would, having executed it, pay for the property. Whereupon Mason left for the East, and the complainant wrote Loring the two letters of the 18th and 19th of June, 1868, which, are the instruments by which it is alleged that the express trust in favor of the complainant in one equal undivided third of the property was created under the statutes of Michigan (pp. 43-45; 55–58; 65–69). These letters, which thus form the only foundation of the action, appear at pages 67 and 68 of the record, being Exhibits F and G.

Immediately after the writing of these letters, Frue, in another transaction, paid on Loring's behalf $5,000 on account of such other transaction; and the complainant, being informed of the fact, telegraphed to Loring on the 22d of June, that *he*, the complainant, had paid there for him, Loring, $5,000, and asked him upon the receipt of either of the letters to pay the same amount to Mason and execute the contract with him (pp. 70; 45–46; 72–73; 112). And this dispatch he repeated on the 26th. On the 27th Loring telegraphed that the contract was closed (p. 70), and wrote, in substance, by letter, in reply to the letters of

the 18th and 19th of June, that he "approved of this purchase—was very much pleased with it—and stated that he joined us (them) in the purchase" (p. 71). After the receipt of the letters he did close the purchase with Mason, and paid the $5,000 under the contract (58; 61–63; 112). This contract appears at page 27, Exhibit A.

In the body of this agreement the defendant is described as "Elisha T. Loring, Trustee." He also signs "E. T. Loring, Trustee." The contract provides for the payment of $5,000 down, $7,500 at the expiration of six months, and $7,500 at the expiration of eight months, from the date of the contract, which is the 18th day of June, 1868, identified as the day of the *oral* transaction between Mason and the complainant in Michigan.

The contract expressly provides that the times of payment mentioned in it are made material. The failure to pay any instalments on the precise day named for the payment of it renders the contract null and void, and any instalments paid before such failure shall be forfeited, which forfeiture is again secured by an iron-bound clause inserted for that express purpose.

After completing the contract and making the first payment, Loring went to Michigan, and there, in July, 1868, the *oral* conversation took place, which is relied upon in the complaint. Frue and Palmer insisted that, as the land had been bought for *Ossipee*, it should be consolidated with and conveyed to *Ossipee;* but Loring was opposed to that. He thought there was more money in it to hold it, and he remarked:

> "We own that jointly, and we will hold it for the present" (pp. 46 and 47).

After discussion, Frue and the plaintiff concurred in this (Frue, pp. 47 and 53; Palmer, p. 72).

As to the terms on which the three should acquire and hold the property jointly, there appears to have been no special discussion. But the clear understanding of each of them, that it was to be *upon the terms of their paying* each for his proportion, whatever that proportion was to be, is very fully established in the record. Loring (p. 112) testified that at the time of the contract he expected

Frue and Palmer to be interested with him, "*each paying his proportionate part* of the purchase." Frue (p. 54) testified:

> "Q. How did you understand that matter; was Palmer to have a third interest *without his paying for it?*
> "A. *I do not remember any such understanding.*"

As to *Palmer's understanding to the same effect*, it is proved beyond all question, with equal clearness, and this may be the proper place to settle that.

FIRSTLY, he *alleges in the bill the fact of payment for his share as the basis of his alleged right to the property.* The force of this allegation, as evidence against him on this point, is increased many fold by the particularity of the statement, when afterwards proved to be wholly false, and known to him to be so at the time. He does expressly aver that (pp. 24–25), in reference to providing funds to meet the remaining payments due upon the property, he determined to sell his stocks in Waterbury, Conn., standing in the name of Loring, for $15,000, and instructed Loring to draw for that amount upon the parties purchasing; and that Loring, shortly after said 18th of December, informed him that he had collected the money and had paid it to Mason upon account of the instalments due on the purchase of the land. And he further alleges that in the early part of 1869 he ordered other stocks, to the amount of $8,000, to be sold, which he claims were to pay for the land.

The Court below examined these allegations of the bill upon the evidence, and came to the conclusion thus expressed: These facts—referring to the established facts in the case—

> "Show conclusively that *no portion of the* $15,000 received from the sale of the smelting stock *was applied to the Mason purchase;* but, on the contrary, *it was applied to Palmer's general account, and that such application was not objected to by Palmer.* With regard to the sale of the Hecla stock [that is the $8,000 sold in the early part of 1869], the proof is no less clear that *it was not applied upon this purchase.*"

And again:

> "I am satisfied, therefore, beyond all doubt, that complainant's case against Loring is not strengthened by

virtue of any money paid upon the purchase"

See Opinion of Judge BROWN, hereto annexed, p.

And in the decree (p. 447), it is expressly adjudged that the—

> "*Complainant has made no payment* to Loring which he directed to be applied, or which was, by said Loring, credited or applied specifically to and upon said purchase."

It appears that at the time of these transactions there were many other transactions pending between the parties; which were the subject of running accounts; that in December, 1868, certain notes of Palmer's, which had been endorsed and issued by Loring for Palmer's accommodation, and for some of which Palmer had specially promised to provide from other sources than property of his in Loring's hands, were falling due, and that other obligations of his, similarly incurred, were about to mature; that, pressed by Loring, he directed the smelting stock at Waterbury to be sold, the proceeds to be applied upon these notes and other obligations; that this was done and made the subject of accounting between them, and the application of the money arising from the smelting stock was made the matter of an account stated between them immediately after the transaction; and there was no pretense, from that time onwards until the filing of the bill, that it was, or should have been, applied to the payment of the purchase of the lands in suit (pp. 77; 81; 91–100; 107–108; 113–115).

The transaction in respect to this land, it may here be stated, unlike all the other transactions between the parties, was not, and was not intended to be, carried into their current accounts. It was, as Palmer himself testifies (p. 105), *a transaction by itself.*

> "There was never any account, that I was aware of, made; *that was a transaction by itself.*"

And he testified again to the same effect at page 90.

Although there was a land account and a money account current, purporting to embrace all transactions be-

tween them, there never was, from first to last, in any account rendered by Loring, any charge to Palmer of any moneys as paid for his account, on the purchase of this land, section 23, nor was there any complaint by Palmer that no such charge was made (pp. 90; 105; 107–108; 113–115).

SECONDLY.—Further proof that Palmer, like the others, perfectly well understood that he was only to have an interest in section 23, *by paying for it in accordance with the contract*, consists in what occurred at the time the final payment was coming due. Palmer, at that time, confessed his inability to meet the payment, either by means of any other resources at his control, or by means of anything in the hands of Loring in which he might have an interest; and it is perfectly clear, upon the proof, that, as both parties understood the situation of the accounts at that time, they both believed that Palmer was largely indebted to Loring. (See Palmer's contract, pp. 93–94; also pp. 91–92; 81; 95–100).

In this condition of affairs the final payment of $7,500 was coming due. The first payment of $5,000 had been made by Loring, although, by subsequent arrangement, it was treated as having been made by Frue (pp. 57–58; 72–73; 112). The second, of $7,500, had been made by Loring. Now, if ever, was the time for Palmer to furnish his quota, or something to represent the interest that he was to acquire. But he was wholly unable to do so; and he knew also that, as affairs stood between him and Loring, he had no right to call upon him to make the payment for him. And so he applies, through Loring, to Mason, the seller, pleading for an extension of the time of payment, that he might be able to raise the money to put into it. The urgency of the matter was intensified by the provision of the contract that all rights under it, and all the prior instalments which had been paid, were to be forfeited, in the case of any failure in the payment of this last instalment, which was to fall due on the 18th of February. In anticipation of this, on the 8th of February, the complainant writes to Loring, asking him to make this proposal to Mason—that the complainant should sell him 1,000 shares of Ossipee at the net cost, on condition that he,

Mason, should retain one-third interest in section 23, Loring to have one-third and the complainant and Frue together the other third (pp. 77; 81; 91–100; 61 and 64; 74–75).

Prior to this, in January, the complainant had been soliciting Mason directly for an extension, which Mason declined. (See letters, pp. 64 and 94.) And, in answer to this last proposal, made through Loring, Mason gave the decisive answer in writing, by his letter of February 15 (p. 64), refusing to consider Palmer's proposition, and insisting that the deed should be delivered and the final payment made on the 18th. Thus Loring was driven to extremity. He was almost as hard up as Palmer himself. But he had put in his $7,500; and, to save that, it was necessary for him to raise the money needed and make the final payment. Accordingly, he writes to Palmer immediately afterwards, under date of February 22 (pp. 74–75; and see p. 94):

> "The enclosed is his [Mason's] reply to your proposal. I was very much disappointed at this result, most earnestly desiring he would accede to it as a help to you, and very much relieving me from the necessity of raising the whole amount due which I have done with some difficulty, to save the previous payments made, and got the deed in my possession."

Thus, not only did the plaintiff set forth in his bill, under oath, the fact that he had paid for his share, as a foundation for his claim to the share, but the proofs establish that not only were those allegations of the bill false, but that, when the time came to make that payment, he had been unable to do so, and had abandoned the attempt, after failing in obtaining an extension of time from Mason.

And Finally, there is another group of facts in proof with reference to certain *fabrications* of evidence and perjured testimony, which demonstrate, beyond all possible doubt, that the plaintiff understood, as Loring and Frue are both proved to have done, that *payment* for his share, whatever it was, *at or before the taking of the title under the contract*, was a condition of his receiving it.

When a party, seeking to maintain a cause in a Court of Equity, is driven, in support of his theory of the case, to *perjury* and the *fabrication* of written evidence, it

speaks with overwhelming force against him, and should be fatal to his case.

Speaking of the deliberate and private character of the examination of witnesses and of proceedings in Courts of Equity, where the witness has the opportunity of weighing his answers before signing them, Lord STOWELL once said:

> "In Courts proceeding in this course of examination, the rule of *falsus in uno, falsus in omnibus*, is a rule of *unexceptionable justice*."
>
> *The Odin*, 1 Rob. (Charles), Adm. 208, 213 (London Edition, at p. 254); quoted with approval in Gresley's Eq. Ev., pp. 11–12.

And again he says, referring to the witnesses in such Courts:

> "*Any one* detected falsehood in their depositions overthrows the whole of their credit."

As Judge STORY said in *The Santissima Trinidad*, 7 Wheaton, 283, 339,

> "Where the party speaks to a fact *in respect to which he can not be presumed liable to mistake*, as in relation to the country of his birth, or his being in a vessel on a particular voyage, or living in a particular place, if the fact turn out otherwise it is extremely difficult to exempt him from a charge of *deliberate falsehood*; and Courts of justice, under such circumstances, *are bound, upon principles of law and morality and justice*, to apply the maxim *falsus in uno, falsus in omnibus*. What ground of judicial belief can there be left, when a party has shown such gross insensibility to the difference between right and wrong, between truth and falsehood."

Again, as Judge BENEDICT said in *The Tillie*, 7 Ben., 382, 383, speaking of the *fabrication* of evidence:

> "The production of a *fabricated log, warrants the rejection of the testimony* which it is brought to support. If possible, it ought never to happen that a case sought to be supported by a *fabricated* log book, should succeed. And, while charges of this kind are not to be listened to unless based upon strong evidence, if they are supported by testimony and remain unanswered on the evidence, they *compel an adverse decree*."

Loring's letter of February 22 (p. 74), had communicated to the plaintiff the final catastrophe of Mason's refusal to grant any extension, and his compulsory payment of the final instalment, on his own account, to save what he had already paid in; and if it was true, as Loring and Frue testified, as the circumstances show, and as Palmer has plainly admitted by his allegations and conduct, as we have shown, that the understanding was, that each should be interested in the purchase *only as he paid* a proportion of the purchase money, the facts there communicated were fatal to his claim, if Palmer appeared to have acquiesced in the communication. He had, in fact, acquiesced, but, *to avoid* this, he deliberately *fabricates*, upon the trial of the case, and produces before the examiner, two fictitious pieces of written evidence.

He asserts (p. 76), after the production of Loring's letter of the 22d of February, that, immediately on its receipt, he replied to it by a letter of the 26th of February. No such letter was produced, nor any copy of it; but on the envelope of Loring's letter, he produces this memorandum:

> "I have been willing to unite in any plan to mutually aid us, but failing in this, cannot consent to lessen my interest in Section 23."

And he testifies,

> "That is the memorandum. I *probably* wrote a letter in accordance with that, but *do not remember the contents* of the letter, except by this minute. I simply noted that on the envelope in which the letter was."

And he admits (p. 77) that he *never received any reply* to the letter from Loring, which certainly is not a little remarkable in view of the position which Loring had taken in his letter of the 22d, namely, that, unless Palmer should remit a proportion of the purchase money of section 23, prior to the 20th of March, Loring would insist upon holding the whole as his own:

But Loring testifies, and this explains why he did not answer it (p. 114):

> "Q. Did you, soon after that time or at any time, receive a letter from said Palmer, dated February 26, 1869, in

> which he wrote, in substance, as follows: 'I have been willing to unite in any plan mutually to aid us, but failing in this, cannot consent to lessening my interest in section 23.' State if you received any such letter at any time, and of any date? A. I am *positive that no such letter was ever received by me.*"

The learned judge below, carefully examining the question of the sending of this letter, says (Opinion hereto annexed, p. 91):

> "As Palmer's recollection of this letter is very indistinct and Loring explicitly denies receiving it, *I must assume that this is not proved.*"

But, not content with this, the plaintiff proceeds with a further fabrication. On the 8th of March, Palmer, having by him Loring's letter of February 22d, informing him of Mason's rejection of his last appeal for time, and that he, Loring, had paid for the whole property and should claim it as his own, except as to the $5,000 paid by Frue, and having occasion to write Loring on other matters, inserts in his letter this, which appears to have been at Frue's request (p. 78):

> "I wish you would send me a statement that Captain Frue owns one undivided one-fourth quarter interest in the 120 acres of 23, *as he has paid* that amount."

It appears that Frue had just written to him about a paper asked for by him, "showing *my interest* in the land purchased" (p. 74) and, on this hint he wrote to Loring, manifestly understanding perfectly well that Frue's interest was *what he had paid for*. As he had *paid* for a fourth, the interest which Palmer asks Loring to put in writing for Frue, was one undivided fourth. Palmer himself interprets Frue's words, "*my interest*," to mean only that one-fourth. But he *omits to call for any paper showing his own interest*, knowing perfectly well that he had paid for no interest, and, therefore, was entitled to no certificate or declaration of trust in his favor.

But when it came to the hearing, seeing that acquiesence by him in Loring's letter of February 22nd, if established, would be fatal to his theory of the case—that it was only because he had paid for an interest, that he was entitled

to an interest—he produces the fictitious postscript to this letter of March 8th, and swears that, enclosed in that letter, and as a part of it, this postscript went (pp. 78–79, 100–101):

> "P.S. Since writing you the enclosed letter to-day, I have referred to yours of the 22nd ult., and I write this to say to you that I cannot consent to your holding the remaining three-fourths of section 23, excepting as subject to my one-third, as originally agreed upon, *having, as you know, sold my smelting stock to aid both of us in securing our interest in the most valuable purchase we have made.* It would be especially unjust and inexcusable for you in this way to assume the exclusive benefit, when your own interest is derived solely through me as a condition of your coming into the purchase. Therefore, I must insist, if you have not already done so, that you should *apply to my interest any means in your hands belonging to me.*
>
> Truly yours,
> CHARLES H. PALMER."

And at the foot:

> "PONTIAC, March 8th, 1869.
>
> "Original of the above enclosed in a letter directed to E. T. Loring, 31 Kilby street, Boston, Massachusetts, and posted by me.
>
> "GINNIE."

"Ginnie" was his daughter, Virginia, who was produced as a witness (pp. 110–111).

Palmer himself had sworn that he had *enclosed* this alleged postscript in the letter of March 8th, *as a part of it.* The daughter swears to her signature in the word "Ginnie," and remembers that her father told her to sign her name, so as to remember it. "He told me to remember the circumstance."

> "Q. This memorandum at the bottom, which you signed, says that the letter was directed and posted by you; how is that? A. It was."

But she has no memory or means of fixing the date, except by this memorandum *written by her father,* and she swears that instead of being a postscript and part of another letter, *this was the whole letter; that nothing else was written at the time except this; and that this was put into an envelope by itself, without any other paper,*

and posted. It was not written on a sheet with another letter, nor was it put with another letter. *This was all that was put into the envelope.* And, although on the redirect-examination they tried to refresh her recollection into its being only a postscript, she could not remember that.

Loring (p. 114) testifies;

> "I am *positive* that no such postscript was ever received, or any paper like that, of which Exhibit B purports to be a copy."

And the Court below finds that no such postscript went with the letter of March 8th, or was ever received by Loring. The *letter* of March 8th was received, and, in reply to it, Loring sent the declaration of trust for Frue (pp. 81–82).

Again, if the *postscript* had been received, it would have been Loring's duty immediately to apply all the stocks in his hands, including the Hecla stock, to make up the payments demanded by him to be made by Palmer before the 20th of March. But he does not do so, nor was there any complaint, from that time forward, of his not having done so. And the learned Court below says (Opinion hereto annexed, p. ):

> "With regard to the sale of the Hecla stock, the proof is no less clear that it was not applied on this purchase, although, *if the postscript* to the letter of March 8th *was actually sent*, and received by Loring, it would have become his duty to make such application.
>
> "In regard to this postscript, there is a conflict of testimony most difficult to reconcile. Palmer swears that it was written on a different sheet of paper from the main letter, but was enclosed in the same envelope. His daughter, however, who made and preserved a copy herself, thinks it was sent in a separate envelope; and Loring swears unequivocally that although *he received the letter, he did not receive the postscript.*
>
> "It seems somewhat singular that when the postscript was of *so much more importance than the main letter*, it should not have been the first thing that occurred to Palmer in writing it, and have been incorporated in the letter, instead of being a *mere afterthought, as postscripts* usually are. But without imputing any perjury to the plaintiff or his daughter, I cannot find that the postscript

> was ever received. *Loring's reply of March 16th, makes no mention of it,*, as it assuredly would have at once, if received,"

Loring's letter of March 16th appears at page 81, and demonstrates that he is correct in saying that the alleged postscript was not received. But an examination of the internal evidence contained in the alleged postscript itself will demonstrate to the Court that it was fictitious, and that the learned Court below, deciding the case on another point, was altogether too lenient in not *conclusively imputing perjury* to the plaintiff.

The postscript says (p. 79):

> "Having, as you know, sold my smelting stock to aid both of us in securing our interests in the most valuable purchase we have made."

The proof is clear to a demonstration, and is so found by the Court below as established beyond all doubt, that this statement was utterly false, and that, instead of having sold his smelting stock to aid both of them in securing their interests in this land, he had sold it under the pressure of necessity *to pay his own notes* (pp. 91–100; 81), as to some of which he had given an express written promise to pay (pp. 93–94), without calling on Loring to help him.

Again: His letter of *March 6th*, two days before (p. 77), was written after the receipt of Loring's letter of February 22d, in which Loring claimed to hold all the purchase as his own, except that part represented by the $5,000, and *this* is undoubtedly the letter written by Palmer *in reply to that letter of Loring's of February 22d.* When he wrote the letter of March 6th, was the time for him to answer that demand; and in that letter Palmer says:

> "*I shall do the best I can. With the land in 23, Ossippee ought to sell.* It is cheap, and it must sell at some time, if not now. Since I went up to L. S. last spring, I must say *at no period of my life have I begun to suffer so much as I have from that time;* yet it seems to me, by doing the best we can, we shall in the end come out all right."

And yet, having written that, he attempts to palm off upon the Court this postscript as having been written two days later, upon a reperusal of Loring's letter of the 22d.

The mere difference in tone between the alleged postscript and all the other correspondence is a sufficient condemnation.

It appears further by Loring's letters of March 16th and March 23d (pp. 81 and 95), that it was in obedience to the direction contained in Palmer's letter of March 6th (p. 77), that he sold 100 shares of Hecla stock for $8,000, to apply the proceeds, not to the payment for an interest in this land, but to meet Palmer's current obligations which Loring had to pay, and to which he had referred in his letter of November 25th to Palmer (pp. 91–92), and the proceeds, as so applied are, as stated in Loring's letter of March 23d (p. 95), credited in his account (pp. 107–108); and Palmer, in his reply of April 5th (p. 95), ratifies that transaction. This carries further proof of the internal falsity of the postscript, for, if Palmer actually, at that time, made the claim set forth in the alleged postscript, that Loring should apply any funds in his hands to the Mason purchase, it is very singular that he should never have objected to these several accounts showing *no charge to the Mason purchase*, but simply a charge *on general account*, and the application of the proceeds, not to the Mason purchase, but as against his obligations in general account; and especially is it singular that he should expressly have approved, in his letter of April 5th, this disposition of the proceeds (pp. 95–96; 108).

Thus, we claim to have established beyond all doubt that Palmer understood, just as Loring and Frue did, that each was to have an interest *only in proportion as he joined in paying the consideration for the purchase*—

1. Because he has, in substance, so alleged in the bill, and *falsely pleaded payment as the basis of his claim.*

2. Because, when the time came to make the payment, in default of which the interest of all parties would be forfeited, he *sought, on his own account, for an extension of the time of payment*, and, having been unable to accomplish it, acquiesced in Loring's payment, and Loring's claim, founded thereon, of interest to the extent that he had paid. And—

3. Because of his *deliberate fabrication of evidence* in the vain attempt to prove that he had *not acquiesced* in such claim on the part of Loring, but had, in fact, *paid* for a share.

*As to the declaration of trust* annexed to the bill (p. 29), it was claimed in the bill, and in the argument below, that this might be construed as a declaration of trust in favor of Frue, for the one-quarter for which he had paid, and in favor of Palmer for another quarter; which claim was based upon the somewhat vague language of the declaration, inartificially drawn without professional aid.

We leave this, as it is covered by the conclusion of the learned Judge below (Opinion hereto annexed, p. 93):

> "But considering this declaration in connection with Palmer's letter of March 8th, it seems to me entirely clear that it was intended simply to secure a quarter interest to Frue, and that Loring promised to account to Palmer or his assigns, *because he did not really understand whether Frue or Palmer, as between themselves, were to have this interest.*"
>
> See Palmer's letter of March 8th, asking for the declaration (p. 78), and Loring's answer, in sending it (p. 81–82).

It is as clear, upon the face of the instrument, as anything can be from the contents of so badly drawn a paper, that it was not intended to refer to more than *one-quarter*. Palmer had at first, in his telegram of June 22d, claimed that he himself had paid the $5,000 (p. 70). Afterwards he says that, in July, he had told Loring that it emanated from Frue, and Loring, by his own evidence, seems to have heard something to this effect in October (p. 112).

But it is manifest, as the Court below finds, that, when Loring wrote the declaration, he was uncertain to which he was really under obligation to account, Palmer having negotiated the purchase and Frue having come in under him; and as he was to retain the property and possibly sell it, the undertaking to account for the proceeds of the sale of a quarter to Palmer or his assigns, is satisfied by Frue being regarded in his mind as the representative of Palmer. If the fictitious letter of February 26 and

postscript of March 8 are excluded from consideration, as the Court below excluded them, the *acquiescence* by Palmer in Loring's claim, contained in his letter of February 22, that having paid all the purchase money but $5,000, that is to say, three-fourths of the purchase money, he should hold as his own three-fourths of the property, is clearly demonstrated. It was only to prevent that demonstration that he invented and introduced the false postscript and letter. From that time forward, there was no suggestion until the filing of this bill, in December, 1875, nearly seven years afterwards, of any claim of interest by Palmer in this property (p. 115), which he concedes was not embraced or intended to be embraced in any accounts between the parties, or involved with any other transactions, but was, as he says, "*a transaction by itself*" (pp. 105 and 90).

Recognizing the rule that such *laches*, following upon *acquiescence*, would be fatal to a claim, even of a secret trust, the plaintiff seeks to avoid the effect of it by further false suggestions in the bill, the falsity of which is demonstrated by the record. He says (p. 26):

> "Since the final payment in February, 1869, upon the property purchased from Mason, your orator has had no other dealings with the said Loring, and has repeatedly attempted to procure an adjustment and final settlement of his account with him, but he has been unable to do so."

"*No other dealings*" and ineffectual attempts to bring Loring to an "adjustment and settlement of his account"! This is the plea by which he seeks to avoid the charge of *laches*. The record shows, on the contrary, that, instead of his having repeatedly attempted to bring Loring to an adjustment of accounts, the correspondence had been uniformly the other way; that it was Loring who had always been pressing him to settle and adjust. And, instead of there being no dealings, *the record is full of subsequent dealings, extending down at least to the end of* 1870. Of course, this was all well known to Palmer when he swore to his bill, most of the letters being in his own possession.

See, particularly, letters—Loring to Palmer, Sept. 4, 1869; Palmer to Loring, Sept.

18, 1870 (98–100); Loring to Palmer, Oct. 12 and Oct. 20, 1870; Palmer to Loring, Nov. 7, 1870 (200–201); Loring to Palmer, Nov. 11, 1870 (298); Loring to Palmer, Oct. 5, 1870 (329); Loring to Palmer, Oct. 13 and Oct. 20, 1870 (366–367). See also interview at Detroit, in Oct., 1870 (329).

Not only do these letters show that there were constant dealings between the parties for nearly two years after the letter of February 22, 1869, but some of them, and notably the correspondence of September, 1869 (pages 98 and 99), show that Loring, having at that time, on the 4th of September, paid the last outstanding note of Palmer's, rendered his account, and demanded a settlement on the 1st of September, 1870, and that Palmer, in reply, *promised to try and come up to his views* in making payment by September, 1870, promising to do all he could; and *this account, thus rendered and accepted, excluded the idea of anything remaining unsettled between them in respect to Section* 23.

As a further ground of excuse for delay, the bill says that in October, 1871, Loring sued the complainant, but never brought the suit to trial, and in June, 1874, voluntarily discontinued the suit. On page 393 is the bill of particulars served by Loring in that suit, which appears to have been a suit for the balance of account due September 30, 1870, which Palmer had promised to pay, and had not paid. What it has to do with the question of *laches*, as between the parties, it is difficult to see; nor is it apparent how it could have been made the vehicle of asserting the claim presented in the present bill.

And finally, as the last pretext of excuse for the *laches*, the bill alleges (p. 26) that:

> "While your orator had for a long time feared that the said Loring was intending to cheat and defraud him out of his interest in the lands hereinbefore described, he had no evidence thereof, until July last past, when he learned of the deed executed by the said Loring to the said Welch."

When the complainant swore to that statement in the

bill, he must have had in mind Loring's letter of *February* 22, 1869, received by him nearly seven years before, in which he expressly notified Palmer that he should claim adversely to him the share now sued for. There was nothing else than that which the record discloses that could possibly have been referred to as the foundation for a *fear* that Loring was intending to cheat and defraud him out of his interest. But if that letter was the ground of the *fear*, does it not aggravate rather than excuse the *laches?* The *fear* intimated can only be the *fear of an adverse claim by Loring* to his share. And, if he so construed it when received, how are his seven long years of delay excused?

We have printed in an appendix the entire opinion of the learned Circuit Judge before whom the case was tried, from which it will appear that every fact *disputed* upon the pleadings and at the hearing, *he finds in favor of the defendant*—that there was no payment by the complainant on account of this purchase; that the defendant paid the entire purchase money, except the $5,000 contributed by Frue, and for which Frue received the declaration of trust in one quarter; that that declaration of trust was intended to relate to but a single quarter, and not to two-quarters; and that the *fabricated* letter of February 26 and the *fabricated* postscript of March 8, never passed from the complainant to the defendant. But the learned Judge bases his decree in favor of the complainant upon *undisputed* facts—upon the proposition that the correspondence which preceded the execution of the contract, taken in connection with the contract itself, is sufficient to show that it was the intention of the parties that the three should be jointly and equally interested in the land, and that this created a trust for the complainant in one-third; and that—

> "*Although the evidence of acquiescence in Loring's claim of forfeiture is certainly strong*, and, in a case where the evidence of the original creation of the trust was less conclusive and the value of the purchase more doubtful" (Opinion hereto annexed, p. 94)—

he should feel constrained to dismiss the bill upon that

ground, he nevertheless concludes that the *laches* is not sufficient to defeat the claim.

### Specification of Errors.

The appellants, therefore, allege that the decree below is erroneous in the following particulars:

*First*, in decreeing that the appellant Loring took the contract for the purchase of the lands in question from Mason, upon a valid trust for himself and the complainant and one Frue, in equal and undivided interests, and that the contract and the lands were, in the hands of Loring, charged with a trust in favor of the complainant to the extent of an undivided one-third interest therein, subject to the payment by him of one-third of the purchase money, and that the legal title to the lands subsequently acquired by Loring, in pursuance of the contract, was charged with such trust in favor of the complainant; and—

*Second*, that the Court erred in not holding and decreeing that, by reason of his acquiescence and laches, the appellee ought not to have been permitted to maintain his bill.

## POINTS.

### First Point.

*The evidence was not sufficient to establish, under the Statutes of Michigan, an express trust in Loring as to the lands in question, for the benefit of the complainant, to the extent of an undivided third, or any other portion of the property.*

(*a.*) In establishing by evidence, under the Statutes of Michigan, an *express* trust, there is *no room to indulge in imagination or inference.* If created at all, it must

be by clear and unmistakable *expression*, and no aid can be derived towards its production from *implication*. If it is to be argued out or inferred, it necessarily fails. As the name denotes, it is an express trust, and wholly expressed, or it does not exist at all. In this respect, the Statutes of New York, abolishing uses and trusts except as therein authorized and defined, made a wide and clear departure from the law as it existed, and still exists, in England and in the other States. The States of *Michigan* and *Wisconsin* re-enacted these statutes of *New York*, with a provision which, in the particular case of an express trust, such as is here claimed to have been created, goes far beyond the demands of the New York Statutes, in exacting that the trust shall be "*fully expressed and clearly defined* UPON THE FACE *of the instrument* CREATING *it.*"

Thus, the principal light, by which the law of this case is to be determined, is to be derived from the statutes and decisions in New York, Michigan, and Wisconsin.

The material provisions of the Michigan Statutes bearing upon the case we set forth, as required by the rules:

STATUTES OF MICHIGAN WITH REFERENCE TO TRUSTS.

[Compiled Sts. of Mich. §§ 4114–4124, Sections 1–11.]

2 Howell's Annotated Statutes of Michigan—

"§ 5563. *Uses and trusts, except as authorized and modified in this chapter, are abolished,* and *every estate and interest in lands shall be deemed a legal right, cognizable as such in the Courts of law*, except when otherwise provided in this title.

"§ 5564. Every estate which is now held as a use, executed under the laws of this State as they formerly existed, is confirmed as a legal estate.

"§ 5565. Every person who, by virtue of any grant, assignment or devise, now is, or hereafter shall be entitled to the actual possession of lands, and the receipt of the rents and profits thereof, in law or in equity, shall be deemed to have a *legal estate* therein, *of the same quality and duration, and subject to the same conditions as his beneficial interest.*

§ 5566. The last preceding section shall not divest the estate of any trustees, in any *existing* trust, where the title of such trustees is *not merely nominal*, but is connected with some power of actual disposition or management, in relation to the lands which are the subject of the trust.

§ 5567. *Every disposition of lands, whether by deed or devise, hereafter made*, except as otherwise provided in this chapter, *shall be directly to the person in whom the right to the possession and the profits shall be intended to be vested*, and NOT *to any other*, TO THE USE OF, *or* IN TRUST FOR, *such person*; and IF MADE TO ONE OR MORE PERSONS, IN TRUST FOR, OR TO THE USE OF ANOTHER, NO ESTATE OR INTEREST, LEGAL OR EQUITABLE, SHALL VEST IN THE TRUSTEE.

" § 5568. The preceding sections of this chapter shall not extend to trusts arising or resulting by implication of law, and are not to be construed to prevent or affect the creation of such express trusts as are hereinafter authorized and defined.

* * * * * * *

" § 5573 *Express trusts may be created for any or either of the following purposes* :

" 1. To sell land for the benefit of creditors.

" 2. To sell, mortgage or lease lands, for the benefit of legatees, or for the purpose of satisfying any charge thereon.

" 3. To receive the rents and profits of lands, and apply them to the use of any person, during the life of such person, or for any shorter term, subject to the rules prescribed in the last preceding chapter.

" 4. To receive the rents and profits of lands, and to accumulate the same for the benefit of any married woman, or for either of the purposes and within the limits prescribed in the preceding chapter.

" 5. For the beneficial interest of any person or persons, WHEN SUCH TRUST IS FULLY EXPRESSED AND CLEARLY DEFINED UPON THE FACE OF THE INSTRUMENT CREATING IT, *subject to the limitations as to time* prescribed in this title."

It is this last provision (sub-division 5 of section 5573), which is peculiar to the States of Michigan and Wisconsin, and by which the sufficiency of the proof as to the creation of the trust in the present case can

alone be tested. Being a trust for the beneficial interest of the complainant, it cannot exist unless the Court shall find that it was "*fully expressed and clearly defined upon the face of the instrument creating it.*"

The following is the material part of the—

MICHIGAN STATUTE OF FRAUDS.

2 Howell's Annotated Statutes of Michigan—

"§ 6179. No estate or interest in lands, other than leases for a term not exceeding one year, *nor any trust or power over or concerning lands,* or in any manner relating thereto, *shall hereafter be created,* granted, assigned, surrendered or declared, *unless by act or operation of law, or by deed or conveyance in writing, subscribed by the party* creating, granting, assigning, surrendering or declaring the same, or by some person thereunto by him lawfully authorized in writing."

Thus the provision of the Statute of Frauds of Michigan will be seen to be substantially the same as that generally prevailing in the other States of the Union.

To enable us to measure the evidence for the creation of an express trust under these statutes, and to determine whether it is sufficient for the establishment of such a trust, it may be well at the outset of the discussion to see just what has been prescribed by the authorities as the necessary *quantum* and mode of proof required in such cases.

And, from first to last, it is to be borne in mind that, if there was any trust in the present case, it was an *express trust*, and, as claimed by the *complainant* and found by the Court below, must have arisen *eo instanti* upon the execution of the contract by Loring, when the title to the land was acquired by him.

"If an *express* agreement is relied upon, it *necessarily excludes the idea of any trust arising purely by implication of law.* Such a trust will, therefore, be an *express* trust, and will fall directly within the Statute of Frauds."

Bispham's Equity, § 80.

*Mercer* vs. *Stark*, Sm. & M., Ch., 478, 488.

So in *Dunphy* vs. *Ryan*, 116 U. S., 491, which was a case of a verbal agreement, void under the statute of frauds, by which one bought, with an understanding that another should have an undivided interest, which the latter agreed in turn to pay for, the Court said:

> "This is a suit upon an *express* contract. There is no implied contract on which the cross-action can rest, for the law implies a contract only to do that which the party is *legally bound* to perform. As the express contract set up by the defendant was void under the statute, *the plaintiff was not bound in law*," * * *

And Judge STORY said in *Smith* vs. *Burnham*, 3 Sumn., at pp. 460, 461 and 462:

> "The trust arises *eo instanti* upon each purchase, and is then to attach if at all. * * * * The agreement, if good at all, attaches also to the land *at the time of the purchase*, and it is *then* an agreement for an interest by way of trust in the land, a sort of springing trust."
>
> "The trust in the present case, if any there was, was one arising directly *ex contractu*, and *not by implication* or operation of law."

If there is no trust created at the time of the agreement or purchase, it is well settled that no *subsequent* act, such as breach of contract, will create a trust.

> "*Subsequent* covin will not answer any more than subsequent payment of the purchase money will convert an absolute purchase into a naked trust. Where the purchaser at a Sheriff's sale promises to hold for the debtor, and afterwards refuses to comply with his engagements, the fraud, if any, is not at the sale, not in the promise, but in its *subsequent breach. That is too late.*"
>
> *Kellum* vs. *Smith*, 33 Pa. St., 158.

So in the case of resulting trusts. They arise *at the time of the purchase.* The payment of the consideration, to create such a trust, must be made "*at the time and not subsequent to the purchase.*"

*Steere* vs. *Steere*, 5 John., Ch., 1, 10–20.
*Olcott* vs. *Bynum*, 17 Wall., 44:

The question then, is, was there an *express* trust created by the letters of Palmer of the 18th and 19th of June, assented to by Loring and acted upon by him in the contract, as he took it to himself as trustee?

In the first place, there is no room for question as to Loring's absolute authority to take the title in his own name, or as he did in fact take it in the contract and deed from Mason. No complaint is made of this in the bill, and in the argument in the Court below it was entirely approved. So that the case cannot be confused with those cases wherein an agent, associate, or employee has, by fraud or circumvention, or with intent to defraud, acquired title to property in his own name, which was intended to be taken in the name of another. Indeed, Palmer and Frue had the original contract in their hands as early as the spring of 1869. (Palmer, 81, 82, 95; Frue, 54, 55).

No objection was ever made either to the contract itself or to its form, nor has any such objection ever been raised in the fifteen years that elapsed between that time and the hearing below.

Indeed, since Palmer claims *under* the contract and deed, it is difficult to see how he can in any way impeach them. He must, claiming under them, take them for better or worse, with all of their legal characteristics and legal accompaniments. A party cannot blow hot and cold. He "*cannot claim under the instrument without confirming it.*"

*Jacobs* v. *Miller*, 50 Mich., at pp. 126–127.

It is well-settled, on general principles, that an express trust must appear with "*absolute certainty as to its nature and terms*" before the Court can undertake to execute it.

*Steere* vs. *Steere*, 5 Johns Ch., 1, 11.
*Dillaye* vs. *Greenough*, 45 N. Y., 438, 445.

Not only must it be absolutely certain that there *is a* trust, but it must be just as certain *what the trust is*, what its *nature* is.

Mr. Justice WASHINGTON said in *Slocum* vs. *Marshall*, 2 Wash., C. C., 397, 398:

"It is sufficient to say, in answer to the first question, that there is no evidence of a declaration of trust, either written or parol, by which the *nature* of the trust can at all be understood; and *the attempt to create and enforce a specific trust from the loose and equivocal expressions of the parties made at different times and upon different occasions, would be inconsistent* not only with the spirit and policy of the Statute of Frauds, but with the general rules of evidence."

As Mr. Perry says:

"The *objects and nature* of the trust must always appear from such writings with *sufficient certainty*, and also their connection with the subject matter of the trust. Indeed, Courts require *demonstration* on this latter point; *and the trust will not be executed if the precise nature* of it and the particular persons who are to take as *cestuis que trust*, and the *proportions* in which they are to take, cannot be ascertained."

1 Perry on Trusts, § 83.

It is not sufficient to call a man a "*trustee*," or to create a *trust* in so many words. It must appear with certainty *what the trust is*, its nature, terms, etc.

In *Smith* vs. *Matthews*, 3 DeG., F. & J., 139, Matthews conveyed to Clark certain premises subject to encumbrances. Clark covenanted in the same conveyance to pay certain debts of Matthews and to indemnify the latter therefrom. Clark entered into possession and carried on the business conducted thereon for the *benefit* of Mrs. Matthews, his sister. In a separation deed between Matthews and his wife, Clark was also made *trustee* of certain of the property for Mrs. Matthews for life. There were also certain letters written by Clark referring to Mrs. Matthews in connection with this business, which he was conducting, and then followed a memorandum which was mainly relied upon as creating a trust in favor of Mrs. Matthews in the premises first mentioned as conveyed to Clark. This memorandum was delivered to the mortgagee of the premises at the time Clark paid off the encumbrances thereon and received the title deeds. It acknowledged the delivery of the deeds to Clark—

> "*As the trustee* of the real and personal estate of the said George Matthews."

Referring to the well known cases of *Dale* vs. *Hamilton*, 2 Phill., 266, and *Foster* vs. *Hale*, 3 Ves., 707, Lord Justice TURNER said (page 149):

> "The circumstances of the case certainly lead to the *inference* that a trust for the separate use of Mrs. Matthews *may* have been intended, and they are such as would *incline us to hold* that the trust was created; but the case must be decided, *not upon inference* merely, or according to inclination, but *according to the rules of law.* A court of justice cannot be too careful not to allow the rules of law to be frittered away either by suspicion or prejudice."

Again (p. 151):

> "I take it, therefore, that when this Court is called upon to establish or act upon a trust of lands by declaration or creation, it must not only be manifested and proved by writing, signed by the party by law enabled to declare the trust, that there *is* a trust, but it must also be manifested and proved by writing, signed as required, *what that trust is.* The question we have to consider is, whether there is any *such* manifestation and proof."

Referring to the memorandum as creating the only serious difficulty in the case, he said:

> "But I think it by no means *improbable* that, in speaking of himself *as a trustee* in that memorandum, Stephen Clark *may have meant no more than that he considered himself to be a trustee with reference to the obligation* which he had undertaken for the payment of George Matthews' debts, and at all events, the memorandum does not show *what was the trust* to which it refers, and I think, *therefore, no trust* in favor of Mrs. Matthews *can be founded upon it.*"

So here, Loring *may* have referred, and *probably did* refer, by the word *trustee*, simply to his *obligation* to whoever had paid the $5,000, of which he had been advised by the telegram of June 22; or *possibly* to an obligation to hold the land for *Ossipee* in accordance with Palmer's letters of June 18 and 19. *But in all this there is no certainty.*

In *Dillaye* vs. *Greenough*, 45 N. Y., 438, 444-446, Dil-

laye was made "*trustee*," to have "sole management, direction and control" of a certain property. The beneficiaries were not specified. *Nothing more was said.* The trust was created as an active trust to receive rents and profits. The Court said:

> "It does not declare what shall be done with the rents and profits after they are received. There is no other expression of *what the trust is*, in this respect. In this silence of the instrument, if a trust is to be upheld, it must be for the Court to say, from other facts, from circumstances not shown by the instrument or other writing, that the rents and profits are to be applied to the use of a person, or to be accumulated for some purpose. And then, to go further, and without definite designation in the instrument itself, or in any other *writing*, to point out the person for whose use they are to be applied."

In answer to the suggestion that the author of the trust must necessarily have been intended as its beneficiary, none being specified in the instrument, the Court said:

> "But it does not so necessarily result that the author of a trust is to be the beneficiary thereof, as that, when the instrument is silent, the Court may *unerringly* supply the omission. A trust and a trustee of real property may be created by any writing which passes the legal title to the trustee, and contains a proper declaration of the trust. But *the writing must declare what the trust is.* The Statute of Frauds declares that no trust * * * concerning any * * * lands shall be created, unless by act or operation of law, or by a deed or conveyance in writing. Under a statute very like this in its provisions, it was held that the trust must appear in *writing*, with *absolute certainly as to its nature and terms*, before the Court can undertake to execute it. A trust must be manifested and proved by writing, and the *nature of the trust, and the terms and conditions of it*, must sufficiently appear, so that the Court may not be called upon to execute the trust in a manner different from that intended. Every agreement which is required by the Statute of Frauds to be in writing must be *certain in itself*, or capable of being made so by reference to something else whereby the terms can be ascertained with reasonable precision, or it cannot be carried into effect. *It would be wandering far from the express provisions of the statute and from the rules established by the Courts, if we were to take up this instrument where it stops, after constituting a trustee and giving the power of manage-*

> *ment and control,* and to *frame the trust itself by implication. There is no implication so clearly shown as that no other can by possibility be made.* But it is sufficient to say that the *terms and conditions* of the trust must be expressed in *writing.*"

And the Court held:

> "There is no trust manifested by the ante-nuptial agreement which the Court can execute."

Again, in *Cook* vs. *Barr,* 44 N. Y., 156, 160–161, the Court said:

> "The *parol evidence and the acts of the parties show clearly the alleged trust,* but *these cannot be resorted to* to help out the proof furnished by the writing. *The writing* must show that there *is* a trust, and *what it is;* and, *failing in this it is insufficient.*"
>
> S. P. *Parkhurst* vs. *Van Cortland,* 1 Johns. Ch., 273, 280–282.

Assuming that the term "instrument" required by the Statute of Frauds to manifest or prove a trust, and by the Statute of Uses and Trusts to create it, may be broadly construed so as to include any paper writing, signed or accepted by the parties—letters, entries or written statements of any kind—the rule still remains an absolute one, from which there is no exception, that by those writings, whether one or many, the nature and terms of the trust must be clearly and explicitly expressed, and that it must by the writings clearly and unmistakably appear not only that there is a trust intended, but in whose behalf, for what purpose, and to what extent, as to the proportions of property covered by it. And it must be so clearly expressed that no other intention, no other party, no other terms, can, consistently with the language used, have been intended.

And, now, to this general rule, so clearly indicated by the authorities, is added the special provision of the Michigan Statutes, that the trust in a particular instance must be "*fully expressed and clearly defined upon the face* of the instrument creating it." That is, it must be *created* by writings which fully express and

clearly define it. That this provision in respect to the particular trust for the benefit of other persons means something more than the terms employed in the Statute of Frauds, something more than the terms *manifested and proved* in writing, is obvious. *Otherwise, there was no sense or purpose whatever in the enactment.* Obviously, it was intended to declare a special and particular policy of the State of Michigan in respect to trusts in one person for the beneficial interest of another, and that in such a case there should be no concealment, no doubt, no ambiguity or uncertainty, and nothing left to inference or implication; and that it should not exist unless it was *expressed* in all its details, and *defined* with absolute clearness UPON THE FACE *of the writings* CREATING *it* as distinguished from writings afterwards executed.

Measured by those requirements, the trust which is claimed, and which has been adjudged by the Court below, cannot be read in the letters of Palmer of the 18th and 19th of June, assuming them to have been assented to by Loring and acted upon by him, in taking the contract in his own name as trustee, and assuming that he replied to the letters, that he approved of the purchase, and consented to join them therein.

Instead of clearly expressing a purchase for the joint account of the three parties in equal shares, both the letters, in every line and sentence, declare as clearly as it was possible to be declared that the purchase was intended by the writer for the *Ossipee Company;* and it is apparent that neither the plaintiff nor Frue cared in whose name the contract stood so long as the property was purchased to be held for that company. When Loring wrote, if he did write, that he *joined* them in the purchase, he knowing nothing of it but what was proposed in that letter—to buy it for *Ossipee*—he must be deemed to have acquiesced *at that time* in that intent. If he could have had any other intent to which Palmer and Frue were not parties, if that would help to indicate the trust, it must be derived from the telegram of Palmer, of the 22d of June, notifying Loring that Palmer had paid $5,000 for

Loring's account in Michigan, and asking him to apply that amount upon the purchase.

In respect to that amount of $5,000, thus paid, and to the proportion of the purchase represented by it, it might well be deemed that the use of the word "trustee" in the contract had reference to it; as, by the subsequent declaration of trust, executed in Frue's favor after it had been astertained that he, and not Palmer, was the real party contributing that $5,000, more clearly appears. And simultaneously with the execution of that declaration of trust, or shortly afterwards, it appears that Loring exchanged a mutual contract with Frue for pre-emption of their respective interests (p. 30), by which, at the date of it, in 1869, it is manifest that Loring regarded himself as having exhausted and satisfied the term "trustee" used by him in the contract and deed, by the execution of that declaration of trust in favor of Frue.

The contract itself, and the use of the term "trustee" therein, as appended to the name of Loring, could not possibly have been intended to extend the term "trustee," or any possible trust indicated by it, to the *whole* property. Every theory of the case must concede that as to some portion of it Loring, if not buying the whole for *Ossipee*, as instructed, was buying in his own right; and the use of the term "trustee," as applied to a *part*, is *just as well* satisfied by limiting it to the one-fourth, on which some other party than himself had paid the purchase money, as by limiting it to two-thirds, or any other arbitrarily measured interest, on which no such payment had been made.

(*b.*) In the attempt we are now making to measure the evidence of the alleged trust contained in the writings, nothing but confusion can come from any reference to the *oral* testimony or to *subsequent acts and conversations* hereafter to be noted. The whole body of *writings* out of which this trust must be spelled, if it exists at all, consists only of those to which we have referred—the two letters of Palmer, his telegram, the telegram

and letter of Loring in reply, and the contract itself. And all these may be searched in vain for any statement of Palmer's being interested individually at all to the extent of any defined *proportion* of the property, or, if it was to be a trust for his beneficial interest, for any statement of the *nature* of the trust and the *terms* on which it was to be held, each one of which is, as was held in the authorities before referred to, an element as clearly required to be expressed upon the face of the writings as the intended existence of the trust itself. We nowhere find any reference to the *proportions* or *interests* of the respective parties until we come to the *oral* understanding said to have been arrived at, at Houghton, in July, 1868. And even then there is an uncertainty. It is certainly true that they were not to be interested without *paying* for their interests, but it is by no means certain that they were to own the property *equally* under that *oral* arrangement (see Frue, 53 and 47). They doubtless, even under that *oral* understanding, were each to take and own only what each *paid for* (Frue, 54; Loring, 112; Statement of Facts, *supra*).

Least of all, is there any *expression* of the trust found by the decree below, namely, a *trust* in favor of Palmer to the extent of an undivided one-third interest in the property, *subject* to the payment by him of his full proportion of the purchase money and the interest thereon.

On the contrary, it may, for any thing expressed, just as well have been a trust, if to that extent, subject to and conditioned upon his payment of his proportion of the purchase money *at the times stipulated in the contract of purchase,* which condition, as we have already seen, was understood and agreed to by all three parties.

If a trust in either form is to be created by INFERENCE, which we deny, the inference should be based upon the facts established by the proof, and these facts, we have already conclusively shown, establish the proposition last above referred to, that *payment* was necessary to obtain an interest, and that that payment was to

be made *before* the last payment to Mason under the contract and the acquisition of the title thereunder; the payments contemplated were payments to be made at the stipulated times to *aid* in carrying out that contract. This is shown by the *acts* of the parties, by Palmer's anxiety to obtain an extension from Mason, and by the other facts and circumstances developed in the preceding Statement of Facts.

The learned Court below *argues* that as Loring wrote or telegraphed, in answer to the letters, that he *joined* them, *Frue* and *Palmer*, in the purchase, it follows, as a necessary presumption of law, that they were to be jointly interested, and in equal proportions, and that it is therefore equivalent to a declaration on his part that such was to be the nature of the holding and the distribution of the interest. But it is obvious that the word "joined," as used by Palmer in his statement of the contents of Loring's letter, was used in no technical sense of the word "joint," and forms no basis for the idea that they were to take as "joint tenants." Fairly construed, such an answer to such letters indicated nothing more than a purpose to take the contract for the purpose, and as a compliance with the request, expressed in the letters—to purchase for *Ossipee*. To interpret the word "joined" in any other sense, would be to apply to the language of laymen technical and unintended meanings, which ought not to be, and cannot consistently and naturally be, imputed to them.

It was purely by indulging in *inference*, so emphatically condemned in the authorities above referred to, that the learned Court below reached the conclusion that the intention of the parties was that they should be jointly and equally interested. In fact, he says expressly, as the basis of his opinion (Opinion hereto annexed, p. 87):

> "The correspondence and *conduct* of the parties, taken in connection with their *previous dealings*, and the use of the word 'trustee,' seem to me very clearly to *justify the inference* that Palmer was entitled to a third interest in these lands."

In other words, he *construes and enlarges* the term "*trustee,*" as used in the contract, by a resort to *parol* evidence, which, as will be seen, is utterly inadmissible. It is to the "*conduct*" of the parties, and to their "*previous dealings,*" that he imputes the "*inference*" of a third interest in Palmer. But if we give Loring's answer the full force which it was obviously intended to carry, as *an assent to the proposition contained in the letters*, no other conclusion can be reached than that he assented, at that time, to its being purchased and held for the *Ossipee Mining Company.*

(*c.*) But the trust alleged and found by the learned Court below is not yet found to have been created or proved by the writings in question, unless those writings *render any other conclusion impossible*, to use the language quoted from the above cases, than that Palmer was to have a third *without paying for it* at the time to Mason. Or, in other words, that Loring was to take and pay for the property for the benefit of Palmer, *whether Palmer paid or not.* And we submit that it is impossible to construe these writings so as to read, *upon their face*, any such purpose. And in this point of view the terms of the contract of purchase, as known to all three parties, are very material.

Not only did the contract call for payment, but it called for it in such a way that whoever was to be the purchaser was to be ready with his money, and with every dollar of it, on the contract days, on pain of forfeiture of the entire purchase.

If we have been successful in our preceding state ment of facts, we have demonstrated that not only Frue and Loring, who both testify on the point, but Palmer, who does not, understood at the time that they were only to be interested on condition of their *paying*, and only to the extent in which they had paid or should pay. Now, if this was part of the intent of the purchase, (and if the intent existed it existed at the time of the purchase), then the Court must say, in order to establish the trust alleged and found by the Court below, that, notwithstanding the existence

of this intent, clearly brought home to all the parties at the time of the purchase, they nevertheless can read, "*upon the face*" of the instrument or instruments creating the trust, that it was to be a trust as to one-third in Loring for the beneficial interest of Palmer, *whether he paid or not.* Nor will it do, in this connection, to say that it was a part of the trust that Palmer might pay when he got ready; for it was the intent of the parties, and their conduct demonstrated, as we have said again and again, that they should pay, according as they were to take, *on or before the last instalment became due under the contract.*

Even in the case of a resulting trust, it must be clearly proved that a *specific* ascertained sum has been paid for a *distinct* interest in, or *aliquot* part of, the whole property.

1 Perry on Trusts, § 132.

(*d.*) Again: If the writings show, as we claim they do, that on the one part the complainant and Frue may have intended the trust to be for the *Ossipee Company*, and that Loring, on the other, may have used the term "trustee," to cover and relate to the portion of the payment made by them, or one of them, then also it is manifest that the *nature* of the trust is not "*fully expressed and clearly defined* upon the face" of the papers. If there is room for doubt or difference of intent between the parties to the creation of the trust, upon the papers, then there is nothing of clearness and fulness of expression and definition to satisfy the statute.

The rule is that *there can be but one possible trust indicated upon the papers*, and that so clearly and fully that no other trust is possibly consistent with it; which certainly can not be predicated of these papers.

(*e.*) The rule requiring the trust and all its features and details to be "fully expressed and clearly defined UPON THE FACE" of the writings, necessarily excludes the re-

ception of, or resort to, parol testimony to add to the contents of the papers. For instance, assuming that the use of the word, "*trustee*," in the contract, fully expresses and clearly defines the fact that as to the whole or a part of the property the contract was taken by Loring, *as trustee*, the rule, as supplemented by the 5th subdivision of section 5573 of the Michigan Statutes defining express trusts, *necessarily prohibits a resort to parol testimony to add to that expression* the name of the *cestui que trust*, and the *proportion* of interest to which the trust was to relate, and a description of *what the trust is*.

This is certainly true under the terms of the Michigan Statue; the trust must there appear "UPON THE FACE" of the instruments relied upon. It is equally true on general principles. No resort can be had to the *acts* of the parties or to *parol* evidence in general.

See cases above and hereafter cited; particularly *Cook* vs. *Barr*, 44 N. Y., 156, 160, *supra*, and *Shafter* vs. *Huntington*, 53 Mich., 310, 315.

And, in this connection, we submit that the reliance by the Court below upon the *conduct* of the parties, and upon their *previous transactions and subsequent conversations* to discover what was not expressed "*upon the face*" of the writings, was wholly contrary to the rules of law in such cases. To be sure, the learned Judge, after referring to the oral testimony of the subsequent conversation at Houghton, which had evidently made a strong impression upon his mind, says it is not necessary to rely upon this testimony. But he had accepted the reference to the decision of this Court in—

*R. R. Co.* vs. *Durant*, 95 U. S., 576—

as an authority for the admission of all that evidence; and we submit that in that he was wholly w.thout the warrant of this Court, and that he wholly misinterpreted that decision.

Certainly, this Court never intended to upset the

long established rules of law and equity laid down in the authorities heretofore cited. And, as a matter of fact, no such rule as is contended for by the complainant was sanctioned. The complainant has relied upon the head note of the Reporter, which is too broad, and is certainly misleading. The case was one of *resulting trust*, pure and simple. The Court finds that *the consideration for the purchase had proceeded wholly from the Railroad Company*. There was also clearly an element of *fraud* in the case. The *consideration* having passed from the plaintiff, Durant took the title to himself *as trustee*, and claimed in the case that he was trustee for the original donors of the property, claiming no interest in himself at all. And, of course, the Court held, and must have held, that, *being a resulting trust*, or one arising by implication of law, *the Statute of Frauds had nothing to do with the question*, and that parol evidence was admissible to show who was intended as *cestui que trust*.

Besides, the case referred to came up from Nebraska, and it was erroneously assumed by the Court below that the Statute of Nebraska upon the subject of *trusts* was precisely the same as that of Michigan. The truth was, that, while the *Statute of Frauds* was the same in the two States, there was *no Statute of Uses and Trusts* in Nebraska, much less any such provision as is contained in the fifth subdivison of section 5573 of the Statute of Michigan referring to the creation of express trusts; or, in fact, any similar statute. There is no State, to our knowledge, but New York, Wisconsin and Michigan, that has adopted this peculiar Statute of Uses and Trusts.

Now, eliminating from the *Durant Case*, the features of a *resulting trust*, the fact that the *consideration* for the purchase had passed from the complainant, and the element of *fraud*, it is absurd to impute to that decision a construction, holding that, either as a general rule or in the face of such a statute as the Statute of Trusts of Michigan, and especially the fifth subdivision in question, *parol* evidence could possibly

be received to *eke out* the expression of the trust appearing on the face of the papers.

The parties are bound by the *face* of the papers, and oral evidence is not admissible to vary or contradict their legal effect.

*Jacobs* vs. *Miller*, 50 Mich., at p. 126–127.

(*f.*) But there are certain decisions in Wisconsin and Michigan very pertinent to the question in hand, and which seem to us to show very clearly, by high authority, what was the meaning and purpose of this fifth subdivision, as expressing a new policy of the States adopting it, in regard to trusts for the beneficial interests of third persons.

In *Ruth* vs. *Oberbrunner*, 40 Wis., 238, 263–266, decided in 1876, the language of the Court cannot be misunderstood:

> "This chapter of our statutes contains a provision in regard to that class of trusts not found in the statutes of that State [New York]. It is the fifth subdivision of section 11 [Howell's Sts. of Mich., § 5573], and reads as follows: 'An express trust may be created for the beneficial interest of any person or persons when such trust is fully expressed and clearly defined upon the face of the instrument creating it, subject to the limitations as to the time prescribed in this title.'
>
> "A trust," the Court says, "for the beneficial interest of another is 'valid *when it is fully expressed and clearly defined upon the face of the instrument creating it,*' and *so limited as to time* as not to violate the statute against perpetuities. Does the devise in the present case fulfill or answer these requirements? The real estate is devised to M. Cecilia Fox and M. Hyacintha Oberbrunner *'to hold the same in trust for the use and benefit of* the order of St. Dominican and St. Catharine Female Academy.' *The trust is wanting in all the elements of certainty and precision essential to give it validity.* The words used are *general and indefinite* in their meaning. The trustees are to hold the legal title *'for the use and benefit'* of the beneficiaries, two unincorporated institutions or associations of individuals. No *active duty* is imposed upon the trustees in respect to the management, disposition or use of the property. No provision that the trustees should take possession of the property, receive the rents and profits, and apply them to any specified purpose. Instead of the trust being fully expressed and clearly defined, there is a *fatal*

> *uncertainty* about it in every particular. The trust not only fails to impose any active duty upon the trustees, but it fails to designate any special purpose to which the income of the property is to be applied for the use and benefit of the *cestui que trust.* * * * *
> Apply another test. Suppose a bill was filed to compel the trustees to execute the trust; *what could the Court order the trustees to do?* Would it not be compelled to resort to the *cy pres* doctrine, *establish a trust or frame a scheme* to carry out the charitable intent of the testatrix where she had given no directions and had declared in the will no charitable purpose? It seems to us this course would be inevitable. * * * * * * At all events, *there is no possible ground for saying that this trust, whether passive or active, is fully expressed and clearly defined in the will;* and this was essential to impart to it validity. * * * * * * It is said by the learned counsel for the defendants that in interpreting the fifth subdivision, we should hold that a trust is fully expressed and clearly defined, which would have been so regarded under the *former* law, but such a construction seems to us *entirely inadmissible, for the reason that it completely nullifies and destroys the Statute, which was plainly intended to cut up and make void a vague or indefinite trust, which, by the former law, had been held good.*"

The Court did not pretend in that case to *decide* upon the validity of *charitable* trusts, as a class, but simply passed upon the validity of the trust there involved, *as a passive trust,* under the Statute, providing that it should be "fully expressed and clearly defined."

And in *Shafter* vs. *Huntington* 53 Mich. 310, 315, the Court, after referring to the Statute of Frauds, and the Statute of Uses and Trusts, providing that the trust shall be "*fully expressed and clearly defined upon the face* of the instrument creating it," said, *classing together* these two statutes:

> "Since the passage of the *foregoing enactments* in 1846, no *express* trust has ever been allowed to be engrafted *by parol* on a conveyance, but has uniformly been held to be void."

Indeed, as we have said, the words of the statute are conclusive—"*fully expressed and clearly defined* UPON THE FACE" of the instrument.

(*g.*). In the light of the authorities thus presented, it is manifest that all resort to parol evidence to eke out the terms of this trust must fail; and that this is equally fatal to the attempt, for such purpose, to resort to the prior transactions of the parties, to the fact that in those transactions their interest had, for the most part, been joint, and carried on in the name of Loring, or to the subsequent conversation at Houghton, in July, 1868, on which the complainant in his bill and the learned judge in his opinion in the Court below, so strongly rely. In fact, it is evident from the reading of the bill and of the opinion, that, without the aid of that conversation, the complainant would not have ventured to assert the trust, or the Court below to find it. And the fact of its being necessary to resort to the parol agreement demonstrates the failure of the attempt to create, out of the papers alone, the express trust which is claimed. The parol agreement cannot be enforced in this action, because it does not help to create the trust, It cannot do so. If Loring promised then to hold the property for the joint benefit of the three, whatever remedy or means the others may have had to enforce such an agreement, if any, was not in this action. But, in truth, as has already appeared, the agreement was, as understood by all parties, not to hold it for the joint account of the three, whether they should pay or not, but for the joint account of the three *according to the proportions* in which they should contribute to the purchase money *at the time of the purchase.*

The use of the word "*trust*" or "*trustee,*" without more, is, as we have seen, of no significance. As Mr. Justice WASHINGTON said in *Hurst's Lessee* vs. *McNeil,* 1 Wash., C. C., 70, 75:

> "There is *no magic in the word 'trust'* any more than in the word '*use.*'"

To *extend* the word "*trustee,*" by a resort to the parol evidence of the subsequent conversation between the parties, so as to make it cover a trust for Palmer, *is, in truth, to create a trust for Palmer by parol* evidence, which the Statute says can only be created by writing,

fully expressing and clearly defining it. It is precisely the same thing as attempting to fasten a trust upon an absolute deed. The addition of the word "trustee" is going only one step beyond an absolute deed, for it certainly does not, of itself, create, or manifest, or prove the terms of the trust. At all events, it stops short of clearly expressing and fully defining what the trust is, merely indicating that there is a trust for something or somebody.

A trust cannot be fastened by parol upon an absolute conveyance. This is well settled.

> "No parol trust of lands can be allowed without overthrowing the wholesome provisions of the Statute of Frauds."

The case of an absolute conveyance, intended as a *mortgage*—

> "Affords *no ground* for saying that a *parol trust* can be upheld."
>
> *Sturtevant* vs. *Sturtevant*, 20 N. Y., 39, 40.
> *Rasdall's Adm.* vs. *Rasdall*, 9 Wis., 379, 390–393.
> *Shafter* vs. *Huntington*, 53 Mich., 310, 315.

> "In cases of *express trusts*. if the defendant denies "them, or if he denies them and at the same time sets up "the statute, or if he do not answer at all, only *legal* evi- "dence or *evidence in writing* can be given in proof."
>
> 1 Perry on Trusts, § 85.

## Second Point

***If the trust alleged and found by the Court below could be read as a trust fully expressed and clearly defined upon the face of the papers creating it, so as otherwise to satisfy the requirements of the fifth subdivision of section 5573 of the Statute of Uses and Trusts of Michigan, still, it would be a naked, passive trust, and, as such, unauthorized under***

*the provisions of that statute. Under such a trust no function or title would rest in the trustee; but the statute would have executed the trust immediately in the cestui que trust.*

So that, on the conveyance being made to Loring as *trustee*, the statute passed the legal title immediately to the complainant, and left nothing for this Court, as a Court of Equity, to do, and, least of all, the power or liberty to adjudge Loring to be a trustee for Palmer, or to fasten, by its decree, the trust upon the land, for the statute has in express terms prohibited it. The Court will not undertake to do what the statute prohibits; and the complainant, if he had any grievance to redress, had only to resort to an ejectment suit, and *the proof of this alleged trust would have proved his title at law*, and have given him a judgment against any adverse possessor.

See *Riehl* vs. *Bingenheimer*, 28 Wis., 84, 88, and other cases cited hereafter.

(*a.*) For the consideration of this point we will assume that the trust, instead of having to be spelled out from the correspondence, with or without the aid of parol evidence, was expressed in the contract and in the deed, making it a conveyance of the property to Loring as to one-third for himself, as to one other third in trust for Frue, and as to the remaining third in trust for Palmer.

Conceding all this (and this is more than all that is claimed), the decree appealed from should be reversed. There can be no passive trust under the statutes of Michigan any more than under the statutes of New York or Wisconsin. Any one familiar with the Statute of Uses and Trusts of New York, as it has been administered since its first enactment, would see at a glance that such a conveyance *created no trust;* that the *statute* executed it *eo instanti* and construed the conveyance as passing the *legal* title to the *cestuis que trusts* named, in equal thirds; so that no *bill in equity* would lie for an unlawful withholding of possession. It is simply a case for an *ejectment.*

The language of the Statutes of Michigan, New

York and Wisconsin, in the sections abolishing uses and trusts, is identical. By *all* of these statutes (referring particularly to the sections of the Statute of Michigan)—

> "§ 5563. *Uses and trusts, except as authorized and modified in this chapter, are abolished, and every estate and interest in lands shall be deemed a legal right, cognizable as such in the courts of law,* except when otherwise provided in this title."
>
> "§ 5564. Every estate which is now held as in use, executed under the laws of this State as they formerly existed, is confirmed as a legal estate.
>
> "§ 5565. Every person who, by virtue of any grant, assignment or devise, now is or hereafter shall be entitled to the actual possession of lands and the receipt of the rents and profits thereof. in law or in equity, shall be deemed to have a *legal estate* therein, of the same quality and duration and subject to the same conditions *as his beneficial interest.*
>
> "§ 5567. Every disposition of lands, whether by deed or devise, hereafter made, except as otherwise provided in this chapter, shall be directly to the person in whom the right to the possession and profit shall be intended to be vested, and *not to any other, to the use of or in trust for such person;* and *if made to one or more persons, in trust for or to the use of another, no estate or interest, legal or equitable, shall vest in the trustee.*"

When afterwards section 5573 provided for the creation of express trusts to be created for any or either of the purposes specified in its five subdivisions, it certainly was not intended thereby, as to either of them, to sanction the creation of a merely *passive* trust, in which land should be conveyed to a trustee simply to hold *in trust* for a *cestui que trust indefinitely without any limits of time.*

For this would be absolutely to *nullify* sections 5563, 5565 and 5567, and *defeat* the whole policy of the Statute, which was to *abolish* mere *formal* trusts, which separate the legal and equitable estate for no purpose that the law ought to sanction, by converting them into legal estates.

*Vid.* N. Y. *Reviser's Notes*, 5 Edmunds, N. Y. Stat. at Large, p. 320.

And when section 5568 provides that the preceding sections—

> "Are not to be construed to prevent or affect the creation of such express trusts as are hereinafter authorized and defined"—

the intention cannot be imputed to the Legislature of thereby permitting *formal passive* trusts to be created among the classes of express trusts thereafter authorized. Otherwise, the absurdity would be enacted of recognizing and establishing a policy in one part of an act, and at the same time overthrowing it by the construction of another part.

And it has been over and over again held in Michigan that such *passive* trusts have been expressly abolished.

2 Howell's Sts. of Michigan, Secs. 5563–5572, *supra.*
*Burdeno* vs. *Amperse*, 14 Mich., at p. 97.
*Ready* vs. *Kearsley*, 14 Mich., 215, 228.
*Steevens* vs. *Earles*, 25 Mich., 44.
*Thompson* vs. *Waters*, 25 Mich., 214, 234.

The precise point appears to have been directly and repeatedly determined in the Courts of Wisconsin.

Referring to the above statute in a case in which Judge Paine of Wisconsin had received a conveyance "*as trustee*" for three persons named, one-third to each, *the trust not being otherwise expressed*, the Court said:

> "That statute doubtless renders the trust which was thus created *void*, but it *makes the deed operative to convey the leagl estate* to the *cestui que trust*, therein named."
>
> *Riehl* v. *Bingenheimer*, 28 Wis., 84, 88.

That case is identical with the present, and is absolutely conclusive.

The case of *White* vs. *Fitzgerald*, 19 Wis., 480, 485-488, is to the same effect. *No question as to the propriety of, or necessity for, equitable relief was raised there.* The Court said:

> "What are called *passive* trusts are *converted into legal estates* in the *cestuis que trusts. The trust we are considering is a passive trust.* If Upham had conveyed the

land to Fitzgerald, expressing on the face of the deed that he was to *hold one-half of it in trust* for White, *the latter would have taken the legal title to one-half of the land.*"

The opinion on this point is exceedingly strong. On the questions raised in that case, and *on which the Court passed*, it gives the fullest support to our position. And this, together with the later and emphatic utterances of the same Court in *Riehl* vs. *Bingenheimer*, 28 Wis., 84, 88; in *Goodrich* vs. *The City of Milwaukee*, 24 Wis., 422, 429, and in *Ruth* vs. *Oberbrunner*, 40 Wis., at pp. 263-264, can leave no doubt as to the position of the learned Wisconsin Court on this subject.

The above extract from the opinion of the Court in *White* vs. *Fitzgerald* explains the precise state of affairs in the case at bar. For the present case it states the facts and the law. Here the alleged trust was created, if at all, by the contract and conveyance from Mason to Loring. The word "trustee," as there used, complainant seeks to explain by the letters of June 18th and 19th, and, further, by *parol* evidence. But the trust itself must arise, if at all, out of the *terms* of that *contract and deed;* and, admitting *Palmer's* construction of the papers, in the language of the Court in the above case, he "*would have taken the legal title to * * the land.*"

Indeed, the words of the statute itself are plain enough.

Here, at most, Palmer alleges and seeks to prove that Loring is a *trustee for him;* that Loring took and held the property *in trust for him*; nothing more. This will never do. There can be no such naked passive trust under the statute of Michigan.

As Perry says:

> "*A use, a trust and a confidence is one and the same thing,* and if an estate is conveyed to one person *for the use of or upon trust for* another, and nothing more is said, *the statute immediately transfers the legal estate to the use, and no trust is created, although express words of trust are used. No matter what the intention of the parties may be, the intention of the citizen cannot control ex-*

*press enactments of the Legislature or positive rules of property."*

1 Perry on Trusts, § 298.

It being, under the Statutes of New York, Michigan and Wisconsin, well settled that such *passive* trusts have been abolished, and that the whole legal and equitable estate vests in the beneficiary, the trustee taking nothing, and that such was the principal object of the adoption of those statutes, it necessarily follows that the fifth subdivision of section 5573, providing for the creation of trusts for the beneficial interests of third persons, where the trust is "fully expressed and clearly defined upon the face of the instrument creating it," refers only to *active* trusts, where there is some function for the trustee, some active duty for him to discharge, and *some limit of time expressed for the duration of the trust.*

This is well explained in *Goodrich* vs. *The City of Milwaukee*, 24 Wis., 422, 429-431, where the Court says:

> "By the statute of 'Uses and Trusts' (Ch. 84, R. S.) *passive trusts are abolished,* but *active trusts* are *not.* By passive trusts, as here used, we mean those which are express or created by the words of some deed or other instrument in writing, and not those arising or resulting by implication of law * * * Every express *passive* trust is abolished and the deed or instrument by which it is created, or attempted to be, *takes effect as a conveyance directly to the cestui que trust,* in whom the legal title vests, and *the trustee acquires no estate or interest* whatever. Such must be held to be the operation of sections 3 and 5 of the Statute [§§ 5565 and 5567 Howell's Sts. of Mich.] A conveyance of land from A to B, to the use of, or in trust for, C, the trustee having no active duties to perform, constitutes a passive trust, and the trustee *takes no title, but the same vests immediately and absolutely in the cestui que trust* to the extent of the estate granted.
>
> "But that *active* trusts of whatever kind, provided they be such as were lawful before the passage of the statute, are not abolished by it, nor intended to be, but, subject to the *limitations as to time* * * * may still be created, is manifest by the *fifth subdivision* of the eleventh section [Howell, § 5573], as also by section six [Howell, § 5568]. * * * *The addition of that sub-*

*division* to the four which precede it, and which are found in the Statute of New York, establishes, as it was undoubtedly intended to do, a policy of this State, upon the subject of *active* trusts, entirely different from that which prevails in New York. It shows very clearly that no *active* trusts were intended to be affected or abolished * * * but that any *such* trust may still be created when, in the language of subdivision five, 'it is fully expressed and clearly defined upon the face of the instrument creating it.'"

The Court then adds, referring to the declaration of trust in that case, to sell, convey, lease, demise, or mortgage, and apply proceeds:

"There can be no doubt that this was the creation of an *active* trust, and, *as such*, valid under the Statute."

See also *Ruth* vs. *Oberbrunner*, 40 Wis., at pp. 263–264, where the Court reasserts the same view, referring to the former case; and—
*Dodge* vs. *Williams*, 46 Wis., at p. 100.
*Smith* vs. *Ford*, 48 Wis., 116, 133.

It is clearly settled, as we have already seen, by the Courts in Michigan that every *passive* trust is abolished, and that the statute *executes in the beneficiary*, immediately upon the conveyance, the *legal title* to the estate in which such trust is attempted to be created.

*Ready* vs. *Kearsley*, 14 Mich., 215, 228.
*Burdeno* vs. *Amperse*, 14 Mich., 97.
*Steevens* vs. *Earles*, 25 Mich., 44.
*Thompson* vs. *Waters*, 25 Mich., 214, 234.
*Meth. Ch. of Newark* vs. *Clark*, 41 Mich., at p. 739.

Even where a trust is created, in express terms, simply '*to convey*' to appointees or beneficiaries, it is held to be a passive trust, and the *Statute* transfers the legal title immediately, no conveyance from the so-called *trustee* being either necessary or proper.

*Matter of Winter*, 34 N. Y., at p. 567.
*Clark* vs. *Davenport*, 1 Bosw., at pp. 114–115.

And it is not pretended that Loring's alleged duties extended even as far as that—"to convey." He was only *to hold* in trust.

So that, if the complainant has succeeded in establishing the case made by his bill, he became the *legal* owner, by a title actually and completely vested in him, of one-third of the lands in controversy, and, being such legal owner, he had a plain, adequate and complete remedy at law in an ejectment suit, and the present action, on the complainant's own theory of the case, is obviously but an *ejectment bill* in disguise, and one which a Court of Equity ought not to tolerate or sustain. The bill does not ask for the establishment and enforcement of any *active* trust obligation on the part of Loring. It suggests *no limit of time* for the duration of the supposed trust, as expressly required by subdivision 5 of § 5573. It merely demands a conveyance of the *legal title* which, by the law of Michigan, upon the allegations of the bill, as construed by the complainant, the *statute itself vested in him.* The controversy upon the issues involves nothing but the legal title. So it appears by the pleadings, and so it appears by the decree. What the Court below has attempted to do by its decree, is to execute a passive trust, which the *statute* has said shall not exist, and, dispensing with the trustee and Courts of Equity in the premises, has itself executed.

This is the legal effect of the trust as alleged, and as proved by the correspondence and the contract and deed to Loring, so far as any trust is proved thereby. Palmer expressly claims under the terms of this contract and this deed. He is therefore bound absolutely by their legal effect; and that effect *cannot be contradicted* by parol evidence. "The name of the grantee is part of the deed." A party cannot blow hot and cold. He—

> "Cannot claim under the instrument without confirming it. He must found his claim on the whole, and cannot adopt that feature or operation which makes in his favor, and at the same time repudiate or contradict another feature or operation which is contrary or adverse to it."
>
> *Jacobs* vs. *Miller*, 50 Mich., at pp. 126–127.

The bill does not make a case for any particular equitable relief. It contains a prayer for an injunction, but only in aid of the principal relief; and an injunction was wholly unnecessary, because, as the original deed to Loring was to him "as trustee," whoever took from him took with notice, and he could not convey away the title, for under the laws of Michigan he had none to convey. Palmer himself had it all. There was nothing to enjoin. The bill asks for no accounting. It admits or suggests no lien in the defendants, and cannot, by any possibility, be tortured into a bill to redeem the property from any lien or to establish a lien.

*Rasdall's Adm'r* vs. *Rasdall*, 9 Wis., at p. 394.

It simply claims that the complainant is absolutely entitled to a conveyance of a third of the land, and demands that such a conveyance be compelled by the Court. So the answer claims no lien. It simply demands a dismissal of the bill, as showing no title or interest in the complainant.

It is true that at the close of the principal proofs upon a hearing which turned out to be an interlocutory hearing, the Court did order a reference to a master to state an account between the parties, and to report thereon, upon the ground that it found the alleged trust to be, from the time of the making of the contract, a vested interest in the complainant, but *subject to the payment* by him of his full proportion of the purchase money and the interest thereon, which seems to have been rather to satisfy the conscience of the Court or of the complainant, for the defendant, neither by his answer, nor upon the hearing, claimed any such lien. At the close of the proofs, he simply asked that the bill be dismissed, as he had asked by his answer. But when the report of the master came in, it appeared that there was nothing due and owing from the complainant to Loring; but that, on the contrary, Loring was indebted to the complainant at the date of the report in the sum of $527.52, to which report no exception was taken.

See Decree, p. 447.

And thereupon the Court gave to the complainant the decree which he had originally asked, for a naked conveyance by the defendants to him of an undivided third interest in the property.

The accounting was ordered simply *to enable the Court to properly adjust the principal relief*, for, having found a trust in Palmer's favor, *subject to payment* for his interest, the Court necessarily felt bound to determine whether or not Palmer really owed Loring anything for that interest which the Court was about to order to be conveyed, before decreeing such conveyance.

If these proofs had been taken, as they might have been, before the examiners, prior to the first hearing, the case would have stood upon that hearing exactly as it did upon the final hearing, and the judgment of the Court must have been the same as at the last—that there was created, by the taking of the contract and the deed, a naked, passive trust for the benefit of the complainant, subject to no adverse claim or lien in respect to the premises in favor of the defendants; nothing but a naked, legal title to be conveyed. And we submit that, inasmuch as the statute, on the facts of the case as alleged in the bill, and as finally found, had, if there was any trust intended, executed it in favor of the complainant, there was no jurisdiction whatever, on the equity side of the Court, to hear and determine the controversy, or to render a decree.

The incident of taking proofs before a master as to the account, as a part of the hearing, to determine the subordinate question of fact, as to whether Palmer should pay to Loring anything for the one-third decreed to be conveyed, certainly does not give the Court jurisdiction in equity which it had not by the bill and by the facts of the case as finally ascertained. Upon the final hearing, when it appeared that there was no lien, the Court, even though finding that the property was intended to be conveyed to the defendant in trust for the complainant, should have dismissed the bill, because that very finding involved the legal conclusion that the title was already

absolutely vested, by force of the statute, in the complainant himself.

As authority for these propositions, we need only refer to the following well-known cases :

*Hipp* vs. *Babin*, 19 How., 271, 278.
*Killian* vs. *Ebbinghaus*, 110 U. S., 568, 573.
*Sullivan* vs. *R. R. Co.*, 94 U. S., 806, 811.
*Root* vs. *Railway Co.*, 105 U. S., 189, 212–215.
*Fussell* vs. *Gregg*, 113 U. S., 550, 555.

So it seems to be well settled in Michigan that the action of *ejectment* is the *only action* for the determination of questions of *legal title* to land. The controversy cannot be carried into a court of equity under any circumstances.

*Michigan Cent. R. R. Co.* vs. *McNaughton*, 45 Mich., 90.
*Kinney* vs. *Harrett*, 46 Mich., 90.
*Cleland* vs. *Taylor*, 3 Mich., 201–207.
*Hoffman* vs. *Beard*, 22 Mich., at pp. 62 and 67.
*Hemingway* vs. *Griswold*, 22 Mich., 78.
*Shaw* vs. *Chambers*, 48 Mich., 355, 358 and 360.

Indeed, the cases of *Riehl* vs. *Burgenheimer*, 28 Wis., 84, 88, and *Ruth* v. *Oberbrunner*, 40 Wis., 239, 263, which involved precisely the same questions as those here discussed, were ordinary actions in *ejectment*. Questions of *legal title* only were held to be involved. Such is the case here, The matter would seem to be too clear for argument.

The decisions already referred to clearly establish that this defect of jurisdiction in equity, now insisted upon, may be availed of at any stage of the proceedings, and may even be taken by the Court on its own motion, as it was in the leading case of *Hipp* vs. *Babin*, *ut supra*.

See *Killian* vs. *Ebbinghaus*, 110 U. S., 568.

The consideration of this question involves our con-

stitutional right to a trial by jury. This land is a part of the territory of the State ef Michigan, protected by its laws. There is now a controversy over the legal title, which those laws provide shall only be tried at law by a jury. This Court, in the present case, is simply administering the laws of that State.

*Brine* vs. *Ins. Co.*, 96 U. S., at pp. 627, 633, *et seq.*

*Bendley* vs. *Townsend*, 109 U. S., 665, 668.

It is therefore bound to uphold our constitutional rights under those laws. It is seen, at a glance, that the present case, with its perjured and contradictory evidence, is one which justly and emphatically demands a jury trial.

## Third Point.

*Neither does the bill claim, nor the evidence establish, any trust in Loring by implication of law.*

(*a.*) No such trust is alleged or claimed upon the bill, nor was it claimed in argument in the Court below. But the learned Court itself appears to us to have confounded the rules of law applicable to the two wholly different subjects of express trusts and trusts by implication of law, and to have really *implied* a trust out of what was in fact, if it was anything, an imperfect. and, therefore, non-existent, *express* trust. By *inference* from the conduct of the parties and from oral testimony, and from their former and present relations, the learned Judge has *implied* a trust, and *called* it an *express* trust. Out of the intention of the parties, imputed to them by him from all the circumstances, he builds up, by implication, what he calls an express trust, in the very face of the Statute of Frauds and the Statute of Uses and Trusts. His whole discussion of the matter is as follows:

After disposing of the oral testimony as to the conversation at Houghton, in July, 1868, subsequent to the contract, by stating that it was not necessary to rely upon that, he says (Opinion hereto annexed, p. 87):

> "The correspondence and *conduct* of the parties, taken in connection with their *previous dealings* and the use of the word 'trustee,' seems to me very clearly to *justify the inference* that Palmer was entitled to a third interest in these lands. It is true the bill does not set forth the exact interest held by each, but it is claimed that the purchase was *intended* to be upon the joint account of three persons, and in such case the *presumption* is that all are to be interested equally. It should be borne in mind that those parties have been *dealing in lands for years*, and that *their custom* was to be equally interested; that Palmer, in his letters of June 18 and 19, notifies Loring that he made the purchase, and that Loring, in reply, stated that he approved of it and joined him in it. I think this correspondence, taken in connection with the contract, is sufficient to show *that it was the intention of the parties* that they should be jointly and equally interested."

Evidently, he derives the supposed intention from the fact of their *previous dealings*. But *intention* is not enough to create or establish an *express* trust under the Statute of Michigan. It may have much to do with an *implied* trust.

We therefore think it necessary, as the matter may be discussed, briefly to demonstrate that, as there was no *express* trust, such as is sought to be set up in the bill, so there are no facts in evidence out of which an *implied* trust in Loring can be raised by the law.

(*b.*). There being no resulting trust possible under the Statutes of Michigan in favor of a party paying the consideration for a purchase of lands conveyed to another party, the only other trust that could arise by operation of law, or by implication of law, is by establishing a case of fraud or *mala fides* in the original acquisition of the title.

*Lloyd* vs. *Spillett*, 2 Atk., 150. Opinion of Lord HARDWICK.

Breach of contract, disappointment of expectation, never can be made the basis of the creation of a trust, even by implication of law. In the present case, no fraud or bad faith is alleged in the bill; and on the argument below it was fully disavowed, as we presume it will be here. Indeed, the bill expressly shows that the taking of the contract and deed, as they were taken. was with the full assent of the plaintiff. Nor is there a particle of evidence in the case to the contrary. So that the title vested in Loring under the deed exactly as all the parties to the transaction intended that it should vest. This being so, even if there had been proof of an express promise by Loring, or if one can be implied from the evidence, that he should afterwards, upon terms or without terms, convey separate portions to Frue and to the complainant, a failure to do so on his part created no *trust* in him and charged none upon the property. It seems to be clear, under the Statutes and decisions of Michigan, that the only protection for parties to such a transaction, where such is the intention, is to take a written obligation to convey, or a declaration of trust. A parol or implied promise amounts to nothing.

As the Court Michigan has said :

> "In the purchase of the property in controversy, the transaction was with the *consent* of the defendants, who *knew how the title was taken*, and trusted entirely to a similar *parol understanding*, which would *not avail* them under our Statutes for any purpose."
>
> *Brown* vs. *Bronson*, 35 Mich., 415, 418.

Palmer could no more call upon Loring to convey the premises to him after having directed Mason to convey to Loring—

> "Because of his having had a right to take them himself under the contract, than he could make the demand upon any stranger to whom he might have had them conveyed. The case is one of the purchase of lands by a party, who causes them to be conveyed to another instead of to himself. And, in such a case, unless the grantee gives back a declaration of trust or some contract to convey to the purchaser, he has a *legal right* to retain

what has been deeded to him. There is *no implied trust* in favor of the purchaser."

*Bumpus* vs. *Bumpus*, 53 Mich., 349-350.
*Week* vs. *Bosworth*, 61 Wis., at p. 85.

Having expressly *consented* to and requested the acquisition of the title by Loring, Palmer cannot now complain.

*Sturtevant* vs. *Sturtevant*, 20 N. Y., p. 40.
*Hunt* vs. *Roberts*, 40 Me., 187.

In truth, as the bill, and the testimony of all the witnesses, show, the *origin of the claim* that Loring took the property for the joint and equal benefit of the three parties, was in the *oral interview at Houghton*, in July, 1868, sworn to by Frue and Palmer, and not denied by Loring. The fact of that *oral* agreement was evidently deemed necessary by the draughtsman who prepared the bill, and by the complainant and his counsel upon the hearing, to develope and establish a trust in Loring for Palmer as to an equal third. There is no pretence of anything in writing to that effect before. And, presented in this light, the case is nothing but a *parol* trust; a trust created out of materials from which the law forbids it to be constructed; a promise, it may be called, to hold in trust; a promise to hold for the benefit of another. In other words, it is nothing but an agreement, void under the Statute of Frauds, which, in the eye of the law, is nothing.

There being no circumstances of fraud in the case, no undue advantage imputed to Loring, except the holding of what it is claimed he had promised to hold for, and to convey to, another, the breach of such a promise, if he had been guilty of it, would be wholly insufficient to create a trust by implication of law. Nothing is better settled than that the breach of such an agreement, if made, the disappointment of such an expectation, if declared, without writing, affords no footing for a trust. Here we have no equitable circumstance of any kind—no payment or part performance by Palmer. In truth, as we have shown, Palmer

believed himself to be greatly indebted to Loring during this entire period (91–100; 81).

It has often been held that when the legal title to an estate is procured through the means of an actual or constructive fraud, equity will give relief to the party defrauded by giving the estate the direction which it would have taken had the fraud not been committed. So it has been held that if a grantee or devisee obtain a deed or devise by means of promises made to the *grantor or devisor*, to hold the land for another, this is sufficient to raise a trust in favor of the latter, on the ground of fraud, and that this may be proved by parol. Also, that where a party obtains the conveyance of property by abuse of confidence reposed in him, he is converted into a trustee *ex maleficio*. Also, that a purchase in his own name, contrary to the intent of his principal, by an agent undertaking to purchase for his principal, converts the agent into a trust *ex maleficio*. Also, that where a person, professing to be acting on behalf of a mortgagor or execution debtor, undertakes to purchase in the property at execution or foreclosure sale for the benefit of the debtor, and having thereby led the latter into relaxing his own exertions, and by this means procuring the title at less than its value, afterwards refuses to carry out his agreement, he shall be held in equity to be a trustee for the debtor.

Story's Eq. Jur., §§ 316, 330, 333, 1254, 1265.
2 White & Tudor's Lead. Cas. in Eq. (Part 1), 562.
*Jenkins* vs. *Eldridge*, 3 Story, 181.
*Baker* vs. *Whiting*, 3 Sumn., 475.
*Wilcox* vs. *Morris*, 1 Murphy, 116.
*Jenckes* vs. *Cook*, 9 R. I., 520, and many other cases.

But this case has no relation to any of the cases thus referred to. It has no element in common with them. It lacks the vital element that in all those cases has been held to serve as the foundation for a trust. The cases referred to, of which *Ryan* vs. *Dox*,

34 N. Y., 307, and *Huxley* vs. *Rice*, 40 Mich., 83, may be cited as leading examples, as illustrating the principle there involved, are clearly distinguishable from a case like the present.

In this connection, we refer the Court to a very recent case, heretofore cited, in the Supreme Court of Michigan, where the Court, after referring to the Statute of Frauds, requiring a trust in lands to be created or declared in writing, and to the statutes relating to trusts, providing that they shall be "fully expressed and clearly defined upon the face of the instrument creating" them, uses this broad and significant language, *classing together* these two enactments, says:

> "Since the passage of the *foregoing enactments* in 1846, no express trust has ever been allowed to be engrafted by *parol* on a conveyance, but has uniformly been held to be void."
>
> *Shafter* vs. *Huntington*, 53 Mich., 310, 315.

The fraud or acts amounting to an abuse of confidence, from which the law will imply a promise, are those committed *at the time of the purchase.* No *subsequent* conduct on the part of the purchaser can be made the foundation of a trust by implication of law.

> "*Subsequent* covin will not answer any more than *subsequent* payment of the purchase money will convert an absolute purchase into a naked trust. The fraud, if any, is *not* at the *sale, not* in the *promise*, but in the *subsequent breach*, and *that is too late.* Such a trust can arise only from the payment of the purchase money, *or from fraud in the purchase;* fraud perpetrated by the grantee."
>
> *Kellum* vs. *Smith*, 33 Pa. St., 158, 164.
> 1 Perry on Trusts, § 133.
> *Pickett* vs. *Durham*, 109 Mass., 419.

And again:

> "It may, in all cases, be assumed that when a promise is made to buy or to hold for another, confidence is invited and more or less reposed. So it is in every parol contract for the purchase of lands. But the Statute of

Frauds would be *worse than waste paper*, if a breach of the promise created a trust in the promisor which the contract itself was insufficient to raise."

*Kellum* vs. *Smith*, 33 Pa. St., 158, 165.
*Philips* vs. *Hull*, 101 Pa. St., 567, 575.

The principle thus declared applies, whether the contract or other attempted creation of a trust be considered as void or ineffectual under the Statute of Frauds proper, or under the statute relating to trusts above referred to, which two statutes, as we have seen, are to be *classed together* as one.

The cases of—

*Levy* vs. *Brush*, 45 N. Y., 589, 596.
*Wheeler* vs. *Reynolds*, 66 N. Y., 232; 1-237.
*Wood* vs. *Rabe*, 96 N. Y., at p. 426.

well illustrate the rule now under consideration.

In *Levy* vs. *Brush*, the Court said:

"No case can be found where a contract has been taken out of the statute in favor of a party who had no existing interest in the property, who had done no act of part performance, who had parted with nothing under the contract, simply upon the ground that the other party was guilty of a fraud in refusing to perform his *verbal* agreement. * * * *A party in no legal sense commits a fraud by refusing to perform a contract void by its provisions.*"

And again in *Wheeler* vs. *Reynolds*, *supra*:

"It is a mistake to suppose that parol agreements relating to lands are any more valid in equity than at law. They are always and everywhere invalid. But Courts of Equity have general jurisdiction to relieve against *frauds*, and where a parol agreement relating to lands has been so far *partly performed* that it would be a fraud upon the party doing the act, unless the agreement should be performed by the other party, the Court relieves against this *fraud*, and applies the remedy by enforcing the agreement. It is *not the parol agreement* which lies at the foundation of the jurisdiction in such a case, *but the fraud*. So in reference to parol trusts in lands. They are invalid in equity as well as at law. But in cases of fraud Courts of Equity will sometimes imply a trust, and

will treat the perpetrator of the fraud as a trustee, *ex maleficio*, for the purpose of administering a remedy against the *fraud*. For the same purpose it will take the trust, which the parties have attempted to create, and enforce it; and in such a case the *fraud, not the parol agreement*, gives the jurisdiction."

In *Wood* vs. *Rabe*, *supra*, the Court said:

"The fraud upon which the Court acts in such cases must be something more than that which in a moral sense arises from a mere breach of an oral agreement."

In *Rasdall's Adm.* vs. *Rasdall*, 9 Wis., 379, it was said that the fraud, to create a trust in equity, *must be something more than the mere breach of a parol trust.*

See also—

*Cobb* vs. *Cook*, 49 Mich., 11.

Sugden's name is certainly sufficient authority for the following statement. It is, however, well settled:

"Where a man merely employs another person by parol as an agent to buy an estate, who buys it for himself and denies the trust, and no part of the purchase money is paid by the principal, and there is no written agreement, he cannot compel the agent to convey the estate to him, as *that would be directly in the teeth of the Statute of Frauds.*"

2 Sugden on Vendors (8th Am. Ed., 1873, by Perkins), 438.

This cardinal statement of a doctrine, which seems to us to dispose of the present case, is relied upon as the foundation of the decision in two great leading cases—

*Smith* vs. *Burnham*, 3 Sumn., 435, 459-471.
*Steere* vs. *Steere*, 5 Johns. Ch., at p. 20.

Bearing in mind, all this time, that it is impossible to consider this case, in this connection, apart from the *oral interview* at Houghton, Judge STORY'S language in the former case becomes very significant:

"Webster and defendant alone entered into the written contract with Black for the purchase of the lands. They alone were the parties to it. They alone at law have the legal rights growing out of it. How then does the plaintiff make out any title or interest in the contract? It is by setting up a parol trust to the one moiety of the land purchased by the defendant by that contract under the parol agreement for the partnership; that trust being one of the express terms of that agreement."

"I take it to be true also upon principle that if one person contracts by parol with another, that he will purchase an estate for the latter, and he purchases the estate and takes the conveyance in his own name and pays for it out of his own money and not out of that of the other party, that will *not create a trust* by implication of law in favor of the other party."

It is not sufficient to show by parol that one bought with his own money for the use of another, "*because that would be to overturn the Statute of Frauds.*"

*Blair* vs. *Bass*, 4 Blackf., at p. 545.
*Botsford* vs *Burr*, 2 Johns. Ch., 405.

The case of *Hunt* vs. *Roberts*, 40 Me., 187, is hardly distinguishable from the present case. There two persons, the plaintiff and another, interested in a bond or contract for the conveyance of real estate, agreed by parol with defendant that he should be interested in one-half by making the first payment, and, on advancing money to them for the payment for their moiety, he should hold title to the other half, as security, on giving a bond to each to convey one-quarter to each on being reimbursed advances. Held: First, there was no trust expressed in writing; second, no money was furnished by plaintiff from which to imply a trust; and third, the title was not obtained by any fraud from which the Court could imply a trust, as the defendant held it by *consent*.

*Pickett* vs. *Durham*, 109 Mass., 419, is a strikingly analogous case.

There the plaintiff negotiated with one B. for the purchase of one-third of his interest in a certain gold mine. The defendant proposed to join him in the purchase, and the plaintiff assented. [A state of facts

identical with what is claimed by the complainant here.] Thereafter the defendant, learning of an adjoining tract of sixty-one thousand acres which could be purchased, he and plaintiff entered into an oral agreement to purchase jointly this one-third interest and the tract of sixty-one thousand acres. In making the payments for the interest in the gold mine, defendant became indebted to plaintiff in the sum of $3,000, which sum it was agreed should be applied towards plaintiff's share in the sixty-one thousand acres. Thereafter it was agreed that one S. should join them in the purchase of the larger tract, making their interest one-third instead of one-half therein. Then, in order to effect various arrangements with reference to this tract, it was arranged that defendant should take the whole title to himself. After obtaining the deed, defendant refused, upon demand, to convey to plaintiff his proportion. The plaintiff then filed a bill to enforce an alleged trust in his favor in this tract of sixty-one thousand acres.

Here there is hardly a circumstance to distinguish the case from our own. But the Court said:

> "The law on this point is well stated by Mr. Perry in his recent work on Trusts, § 133, in these words: 'The trust must result, if at all, *at the instant* the deed is taken and the legal title vests in the grantee. *No oral agreement and no payments, before or after* the title is taken, will create a resulting trust, unless the transaction is such, *at the moment* the title passes, that a trust will result from the transaction.' The defendant buys the estate with his own funds and upon his own credit, and although it may be *ex aequo et bono*, he ought to allow the plaintiff to share in the advantages of the purchase, we think the Court cannot compel him to do so upon this bill without exceeding its lawful jurisdiction."

Referring to the circumstance that as a matter of fact the defendant was indebted to plaintiff, and had promised that the debt should represent a share, or part of a share of the purchase, the Court continues:

> "The fact that the defendant was indebted to the plaintiff in the sum of $3,000, and had promised to pay him by a conveyance of an undivided share of a tract of

land which was to be purchased, *or had promised to purchase it on their joint account*, would *not* be enough to make out a case in which it could be said that the plaintiff's money *was used in the purchase*, and that he was substantially a purchaser. The refusal of the defendant to do as he had agreed is not enough to create a resulting trust—"

The Court evidently using the term "resulting trust" in the sense of "implied trust."

And finally the Court added:

"We think that the testimony offered does not make out a *trust by implication of law, or take the case out of Statute of Frauds.*"

And the bill was dismissed, with costs.

See also *Parsons* vs. *Phelan*, 134 Mass.. 109.

Finally, the decision of this Court in *Howland* vs. *Blake*, 97 U. S., 624, 628, concurring with the case of *Levy* vs. *Brush*, 45 N. Y., 489, already referred to, and the prior leading case of *Lathrop* vs. *Hoyt*, 7 Barb., 59, seems to render further discussion of this point unnecessary. There, there was an absolute conveyance taken with an alleged oral promise or agreement to advance money and retain the premises until the rents reimbursed the grantee, and then to reconvey, the promisee having no interest in the lands beyond an alleged agreement with a former mortgagee similar to that just set forth. The Court held that the promisee had no such interest as would sustain such an agreement to—

"Buy the property for his benefit, and to convey to him when required. Such an agreement is one creating *by parol*, a trust or interest in lands which cannot be sustained under the Statute of Frauds. It is a *naked promise* by one to buy lands in his own name, pay for them with his own money, and hold them for the benefit of another. *It cannot be enforced in equity, and is void.*"

See particularly the emphatic expressions of this Court in—

*Purcell* vs. *Miner*, 4 Wall., 513, 517–521.

In *Dunphy* vs. *Ryan*, 116 U. S., 491, A. orally agreed to acquire in his own name the title to a tract of land, and then to convey to B. an undivided part thereof. B. agreed to pay his proportionate part of the purchase money and expenses. *Held*, that the statute of frauds applied, and that no relief could be had either at law or in equity, the Court saying, through Mr. Justice WOODS (p. 496):

> "A contract void by the statute cannot be enforced directly or collaterally. *It confers no rights and creates no obligations* as between the parties."

Again (p. 498):

> "The *mere breach of a verbal promise* for the purchase of lands will not justify the interference of a court of *Equity. There is no fraud in such a refusal. The party who so refuses, stands upon the law, and has a right to refuse.* Under the circumstances of this case the statute is as binding on a court of equity as on a court of law. If the mere refusal of a party to perform a parol contract for the sale of lands could be construed to be such a fraud as would give a court of equity jurisdiction to enforce it, the statute of frauds would be rendered vain and nugatory. The defendant knew, or ought to have known, that the statute required such a contract as the one he seeks to enforce to be evidenced by writing. That he did not exact a contract in writing is *his own fault. Courts of equity are not established to relieve parties from the consequences of their own negligence or folly.*"

See also—

*Fischli* vs. *Dumarseley*, 3 A. K. Marsh, 24.
*Randall* vs. *Howard*, 2 Black, at p. 589.
2 Reed St. of Fr., § 822.
*Moote* vs. *Scriven*, 33 Mich., at p. 504.
*Taylor* vs. *Boardman*, 24 Mich., 287, 302.

We are constantly to remember that it is impossible to consider the claim of this complainant in any other light than as absolutely depending upon, and arising out of, the *oral* conversations at Houghton, and the *parol* evidence as to former usage or dealings of the parties. The idea of a *joint* purchase for the *parties* can be created only out of those materials. As we

have shown, again and again, so far as appears from the *writings*, it *may* have been either a purchase for *Ossipee*, or for Loring and *Frue* alone, but *not* a *joint* purchase in any sense.

Here, as matter of fact, Loring made the purchase and assumed all the obligations, not for Palmer, but for himself, but with the expectation and intention that the others should come in and bear their shares of the burden, and his refusal to convey to the complainant when the complainant had really refused to participate in the purchase by paying his share of the purchase money, not only constituted no trust, but no breach of any legal or moral obligation whatever.

Loring personally assumed the burden voluntarily, to accommodate Palmer and Frue as to their shares, hoping and expecting that they would relieve him of a portion in due time, that is to say, before the money had to be paid by the terms of the contract. Frue complied with the understanding, to a certain extent, and received his full share; all that he asked, all that he expected, namely, all that he paid for. Palmer did not do so; confessed his inability to do so; and Loring was compelled to carry the whole, with the exception of what Frue had paid for.

The complainant's position is infinitely weaker than that of the complainant in *Howland* vs. *Blake*, *supra*, where, as we have seen, the Court used the following language, after holding that the promisee's interest would not sustain the promise or agreement:

> *"It is a naked promise by one to buy lands in his own name, pay for them with his own money, and hold them for the benefit of another. It cannot be enforced in equity, and is void."*

As an example of a trust sought to be created out of somewhat similar circumstances in a recent case before this Court, see—

*Allen* vs. *Withrow*, 110 U. S., at p. 139–140.

## Fourth Point.

*In view of the long continued acquiescence of the complainant in Loring's disavowal of all interest on complainant's part in the lands in controversy, and of complainant's gross and unexcused laches in the presentation of his claim, the Court, as a Court of Equity, should have dismissed the bill.*

(*a.*) The character of the property, as mining and speculative property, is a very leading consideration in respect to the application of the doctrines of acquiescence and laches. It had been bought for $20,000 in 1868. The considerations moving to its purchase, as stated in the letters of Palmer, show that it was purchased for purely speculative purposes with a view of compelling the Calumet and Hecla Company to purchase it from the Ossipee Company, or for a trade between the two companies. It was situated very near the famous Calumet and Hecla mines (72; 44-46). Its value was prospective, founded in the hope of developments similar to those which had taken place on the Calumet and Hecla property; just as all lands in immediate contiguity with mines in a state of development have a factitious and wholly speculative value from that circumstance. It might, in the course of years, develop into enormous value. It might likewise prove, on the other hand, to be utterly worthless.

There was no circumstance certainly established, at the time of the purchase and the deed, to determine which course this property would take, whether it would prove to be another Calumet and Hecla, or as worthless as some of the other lands in which these parties were trading. In 1878, when Palmer was testifying (p. 88), he thought it was worth $100,000, after a lapse of ten years from the purchase. From anything known about the property at the time of this purchase it might, in those ten years, have come to nothing. In dealings as to such a property the Court is governed

by wholly different considerations, where laches and acquiescence in a denial of title are invoked, from those which would apply in the case of property of established and permanent value, as improved farms and improved property in cities.

(*b.*) The evidence shows clearly that all the parties concerned proceeded in their dealings in respect to this property as would ordinarily be expected in the case of property deemed precarious and hazardous as to its value.

Mason, the seller, contracting to let it go for $20,000, utterly declined to do so, except by a written agreement which, providing for payments by instalments running through eight months, worked a strict and immediate forfeiture of all interest in the purchasers, and of all moneys paid on account, in case of default in any payment up to the last dollar.

The complainant, when the time for the final payment came, recognizing at least his moral obligation to be ready with his share of the purchase money, and being unable to do so, tried his best to throw back at least one-half of the alleged interest of himself and Frue upon the seller; and the seller peremptorily refused to take it back.

Loring, being thus placed in a predicament wholly against his will, brought about by the complainant and Frue, in utter disregard of their moral obligations to him, where he was obliged, in order to save the large amount he had already paid in for his share, to pay the balance of the purchase money out of his own means, concluded to do so, and did so on his own account. In this unfortunate predicament, entailed upon him by the breach of faith, or at least by the misfortunes of the complainant, Loring could have no redress; at any rate no immediate redress; no certainty of redress. He could look to the property, it is true. But the property, or the chance to acquire it, had not enabled the complainant to raise the money to pay for any share of it; although it is manifest that he used his best endeavors to do so. And there-

fore a resort to the property, as matters then stood, was a very poor reliance for Loring to get his money back. When it is seen what took place between the purchaser and Loring and Palmer in reference to Mason's retaining a third interest, it is perfectly manifest that the prospect of a forced sale for the recovery of his money was by no means a promising one for Loring. He had paid the money, as his answer states, in the expectation that Frue and Palmer would come in and bear their share of the burden. Now, except as to the $5,000 contributed by Frue, he was, contrary to the expectation and intention of all the parties, left in the lurch, with only the indefinite and precariously uncertain future of the property to which to look for his indemification.

It was under these circumstances that he took the step upon which we rely as clear notice to Palmer that, if he had any idea of claiming an interest in the property, he must do it promptly, and must begin by coming forward with the portion of the purchase money proportioned to the share he claimed. When Loring wrote the letter of February 22, 1869, he, in his generosity towards Palmer, went far beyond what the law or justice or equity would require of him. He might have said that, as Palmer had left him in the lurch, and had failed and refused to participate in the purchase by furnishing his share of the purchase money, which was the only condition of an interest for either party, he had been compelled to purchase and pay for the property on his own account. And if such notice had been given, certainly Palmer would, from the day of delivery of the deed, have been put upon notice to assert his claim, if he pretended to have any. Instead of doing this, however, Loring, by that letter, while clearly defining his view of his legal rights, so far yielded to *courtesy* as to say that if Palmer would be ready with a share of the purchase money by the 20th of March he would admit him to a share in the property as if he had paid before the taking of the title. The letter bears no other reasonable construction than this (p. 92–93).

(*c.*) We claim, in the first place, as to *acquiescence*, that if, on the receipt of this letter, Palmer had expressly replied that he acquiesced in the notice given, that response would have terminated all interest on his part in the land, if any he had before; and that there is nothing in the nature even of an express trust, where the title stands upon a deed, which does not disclose the interest of the *cestui que trust*, to prevent a surrender or forfeiture of his interest by such a step.

This, indeed, appears to have been clearly held by this Court in the case of—

*Seymour* vs. *Frear*, 8 Wall., 216—

which was a case of an express trust, and where the holding was that a denial on the part of the trustee, "that under the circumstances the trust subsisted any longer," acquiesced in by the *cestui que trust*, would have terminated the right. If this be so, then the *mode* of the acquiescence, provided it be clearly proved and established by competent evidence, is wholly immaterial. What is to be ascertained is, the denial on the part of the party afterwards sought to be charged as trustee, of the trust relation, and a deliberate assent to that denial by him who afterwards claims to have been a *cestui que trust*. Now, we submit that the fact of Palmer's acquiesence in Loring's disclaimer of all interest on his part is just as clearly established by the evidence here as if Palmer, in so many words, had written to that effect in reply.

1. The *fabrication* of the fictitious replies to Loring's letter of February 22, the letter of February 26, and the postscript of March 8, demonstrate that, when the day of trial came, Palmer knew that he had acquiesced. *Fabrication* of evidence, under such circumstances, is clear *confession*. We refer to the statement of the evidence with which we have prefaced these points for the exact facts in reference to those fabrications.

2. The *actual reply* made by Palmer was a substantial

acquiescence (see his letter of March 6, Exhibit J, p. 77). He does not, for one moment, directly or indirectly, question the perfect fairness and propriety of the position taken by Loring in his letter of February 22. He does not pretend that Loring's position there taken was not in conformity with the expectation upon which all parties had gone into the enterprise. He does not pretend that there was any obligation on Loring's part to bear his (Palmer's) share of the burden; or that there were any means in Loring's hands to which he could resort for raising his share. He simply acquiesces and promises to do all he can, and deplores his miserable fortune which has led to his failure to respond. His words are:

> "I shall do the best I can" (p. 77).

Then follows his letter of March 8 (Exhibit K, p. 78), wherein, recognizing his own failure to participate, as had been intended, in the purchase, but that Frue had, to the extent of one-quarter, *paid* his portion, and so, and only so, was entitled to a share to that extent, he asks Loring to send him a statement that Captain Frue owns one undivided quarter interest in the 120 acres of 23, "*as he has paid that amount.*" And then, when Loring, in accordance with the request thus expressed, had sent him the declaration of trust in one-quarter in favor of Frue, he writes his letter of April 5, 1869 (Exhibit 19, p. 95):

> "Your letter containing the 23 contract of March 23d came to hand while I was away from home. I have sent the contract to Frue, *who alone is the owner of the undivided one-fourth of 23.*"

And finally, in September, when on the 4th, by his letter of that date (Exhibit 23, p. 98), Loring has written him enclosing his account of all transactions up to that time between them, which contained no reference to section 23, saying:

> "My object in writing at this time is to forward copy of the accounts between us, made up to the 1st

of September, closing your individual account, having paid the last notes of yours outstanding on the 29th ult., passing the balance due on these to the other land account. I deem it all important to give you ample notice that this account *must be settled* at the latest period possible for me to wait for it, on the first day of September, 1870."

Instead of replying in indignant terms, as he would have done if his present position were an honest one, "Why, you are leaving unsettled the whole transction between us in relation to section 23. That ought to be included in my account; you have paid for my account one-third of the purchase money of that," he simply replies by his letter of September 18 (Exhibit 24, p. 99):

> *"I shall try and come up to your views in making payment by September, 1870. I shall do all I can."*

Surely, if Palmer had not understood himself to have acquiesced in the position taken by Loring in the letter of February 22, he would, in some one or other of these later letters, have whispered, at least, some intimation to that effect. As he did not do so, it is perfectly clear that his present position is a most dishonest one. And if then he entertained the purpose of asserting, after the lapse of seven years, his present claim, he must then have been acting with the sole view of *lulling* Loring into the belief that he had abandoned all claim to the property.

3. The fact alone of the lapse of *nearly seven years* ought, as we claim, to prevent any court of equity from entertaining the suit. But the lapse of seven years after the close of a correspondence so significant, so *inconsistant with the claim* afterwards presented, must, as we submit, be absolutely fatal.

What act or word of Palmer can be pointed out from the day he received Loring's letter of February 22, 1869, down to the day of the commencement of this suit in December, 1875, that indicates the faint-

est idea on his part that he had, or intended to assert, any interest in the property? In fact, so convinced was the learned Court below by the overwhelming character of Palmer's acquiescence, that it uses this language (Opinion hereto annexed, p. 94):

> "*The evidence of acquiescence in Loring's claim of forfeiture is certainly strong.* And in a case where the evidence of the original creation of the trust was less conclusive, and the value of the purchase more doubtful, I should feel constrained to dismiss the bill upon that ground."

We suggest that the learned judge, when he implied that the value of the purchase was not doubtful, was influenced and misled by the subsequent events in respect to the property, and had lost sight of that demonstration, which was furnished at the very point of time of the taking of the title by the ineffectual attempt of Loring and Palmer to put back upon the seller one-third of the purchase, of its doubtful character at that time as understood by all parties.

With all deference to the learned judge below, we must submit also that the question of the strength of the evidence of the original creation of the trust has nothing whatever to do with the weight which must fairly be imputed to the evidence of acquiescence. If there was evidence sufficient to establish the original creation of the trust the degree of its strength is of no moment, and cannot affect the question whether the interest so created has been abandoned by acquiescence, or the weight which is due to the evidence going to sustain that fact.

(*d.*) Another conclusive argument to sustain our proposition, not merely of neglect to prosecute his claim, but of an intentional acquiescence on the part of Palmer, is derived from the false excuses put forth by him for not doing so. The strength of the maxim that he "who excuses himself accuses himself" is nowhere more potent than in a case like this; and where

the party puts forth false excuses, the accusation which his doing so involves against him is tantamount to conviction.

As we have shown in the statement of facts, all three of his excuses set forth in the bill are pretended and fictitious excuses, false in fact, inapplicable in substance. He falsely pleads that since the receipt of Loring's letter of February 22d, or since the final payment for the property, he had had no dealings with Loring, and had "repeatedly attempted to procure an adjustment and final settlement of his account with him, but has been unable to do so." Every word of this suggestion is false in letter and in spirit. The dealings between them continued to a much later date; and the correspondence continued down to the end of the year 1870. Instead of repeatedly attempting to procure an adjustment and final settlement of his account, he had never made any attempt in that direction. He had shunned and shirked, on the contrary, repeated and constant attempts of *Loring* to make *him* pay up. Loring had even sued him in 1871 for the balance of his account, and finally discontinued the claim, believing him, as he asserts in his answer, to have been insolvent and not worth suing.

His second pretended excuse rests in the fact of Loring's suit, and he would have had the Court infer from his allegation of this fact in his bill, that this suit commenced by Loring had something to do with his present claim, or that it might have been made the footing for an assertion of that; whereas the contrary expressly appears. And the letter itself, of February 22, 1869, is proof positive that on the receipt of it he was notified that Loring intended that, unless he paid at the date there indicated, Loring should hold the lands against him by an adverse possession, claiming absolute title.

The complainant could have meant nothing else than this when he said that——

> "While your orator had for a long time feared that said Loring was intended to cheat and defraud him out

> of his interest in the lands, he had no evidence thereof until July last past, when he learned of the deed executed by Loring to Welch."

The complainant and his counsel demonstrate, by these false excuses set forth in the bill, that they knew there was something to excuse; that they knew that the intent of the complainant to abandon his interest, if any he ever had, was directly involved, and that a failure on their part, at the outset of the litigation, to state some plausible reasons for a contrary position, was absolutely necessary to save their bill from immediate dismissal.

We have not, then, a case of mere laches, mere neglect to prosecute a claim, and so letting it become stale, it having been once asserted; but, on the contrary, the case of a party who never, from the outset, asserted any claim. And when, at the beginning, his adversary, the party afterwards sued, expressly notified him that he denied all interest on his part, he formally acquiesced in the denial, and then, on the top of that, reasserted his acquiescence by every day's subsequent delay to sue.

To all this must be added the speculative and precarious nature of the property involved, as intensifying at least the moral, and, as we believe, the legal, effect of the acquiescence, and of each successive year's delay.

We beg now to call the attention of the Court to some of the authorities applicable to this question of acquiescence and laches.

The case of *Russell* vs. *Miller*, 26 Mich., 1, has many features in common with those of the case at bar; and the Court said, on the effect of delay in prosecuting the claim intervening after acts inconsistent with the existence of the disputed claim;——

> "The delay in appealing to the Courts for redress, when his [complainant's] alleged rights were daily destroyed or perilled before his eyes, would not only go far to cut off any right to resort to a court of equity for relief, but connected with other facts, confirms the defense and contradicts the theory on which he relies.

"Up to the time of filing the bill complainant has very persistently *omitted to take any steps that an honest claimant would find it incumbent on him to take* in support of his right. *We can only account for the present bill by the great value of the property* and the facility of proving, after this long interval, hearsay statements and admissions, without the whole circumstances on which their just interpretation depends.

"The testimony showed many such statements, which if truly reported and not looked at in the light of the surrounding facts, would go far towards making out a purchase for the firm [here joint purchase]. But the acts of the parties are stronger than their words, even when freshly reported. And, throughout the case Miller [here Loring] appears to have acted openly as proprietor of what was in his own name, and Russell has done the reverse, and *acted as owners do not act.* The theory of the defense [a purchase by defendant, *with option to the others to come in if they chose*] *is the most natural,* and is, we think, in harmony with the preponderance of testimony. These controlling facts are very clearly made out" (26 Mich., pp. 20–21].

Finally the Court adds:

"The case has impressed us very strongly with the wisdom of the rule which will not let parties sleep on their equities, and with the danger of disturbing titles on ancient hearsay and gossip" (p. 21).

See also—

*Pierce* vs. *Pierce,* 22 Northwest. Rep., 81, 86 (Sup. Ct. of Mich.).

Even if Palmer had written and sent, as he did not, the alleged letter of February 26, and the alleged postscript of March 8, asserting his claim, it would not have obviated the effect of his subsequent laches.

"The mere assertion of a claim, unaccompanied by any act to give effect to it, cannot avail to keep alive a right right which would otherwise be precluded."

The complainant should pursue his claim promptly—

"Not by empty words merely," and he cannot "play a game at which he alone risks nothing."

*Clegg* vs. *Edmonston,* 8 De G. M. & G., 787, 810 and 814.

This defense of laches applies to all cases coming before a Court of Equity, whether they relate to express trusts, or to any other head of equity jurisprudence. It is wholly independent of any considerations of a release, forfeiture, or surrender of the trust or obligation, and of the statute of limitations. It is a doctrine of equity *procedure;* applies at all times and to all subject matters; is, withal, the most beneficient instrument of justice in the hands of the chancellor; and always derives special potency when it is aided, as here, by strong evidence of *intentional acquiescence,* as distinguished from mere negligence in prosecuting a claim and allowing it to grow stale.

And, as this Court said, quoting Judge STORY (Story's Eq. Jur., § 1284):

> "Hence it is an established rule with courts of equity, *independent of any statute limiting the time* in which suits can be brought, that they will not entertain *stale demands.*
>
> "If there be a clear breach of trust by a trustee; yet if the *cestui que trust* or beneficiary has for a long time *acquiesced in the misconduct of the trustee, with ull knowledge* of it, a court of *equity will not relieve him* but leave him to bear the fruits of his own negligence or infirmity of purpose."
>
> *Hume* vs. *Beale's Ex'tr'x.*, 17 Wall, 336, 348.
> See also *Seymour* vs. *Freer,* 8 Wall at p. 216.

It is well said by a learned Court with reference to the defense of laches in a case where the trust relation had been repudiated to the knowledge of the *cestui que trust,* a case since cited with high approval by this Court:

> "This is upon a principle of *staleness of demand,* a defense which is peculiar to courts of equity, and may be made available as a defense without being specially pleaded. *Gross laches* on the part of the *cestui que trust,* according to well established principles of equity jurisprudence, debars any relief at the hands of a court of equity. *If a beneficiary sleep on his rights, with a full knowledge of a clear breach of trust* or other misconduct on the part of the trustee, he will be left to bear the fruits of his own negligence or infirmity of purpose.

"This doctrine of staleness in a demand will often authorize a court of chancery to refuse relief to a complainant in many cases where no statute of limitation applies. It is founded in its origin upon a sound public policy, which has a just regard for the preservation of the peace of society. It is of the utmost moment that there should be some end of lawsuits, an unreasonable encouragement of which is disastrous to the welfare of any government. Hence, reasonable diligence in the assertion of one's rights in the courts is properly exacted, not less than the exercise of conscience and good faith."

*Nettles* vs. *Nettles*, 67 Ala., 599, 601, cited with approval in *Philippi* vs. *Philippe*, 115 U. S., 151, 157.

In *Philippi* v. *Philippe*, *supra*, it was held that time begins to run from the time when the repudiation of the trust comes to the knowledge of the beneficiary. This is well settled. In that case the question was more particularly as to when the statute of limitations begins to run. The rule, however, is the same in both cases.

Again this Court has said:

"If the case, as it appears at the hearing, is liable to the objection, by reason of the laches of the complainant's, the Court will, upon that ground, be passive and refuse relief. Every case is governed chiefly by its own circumstances; sometimes the analogy of the statute of limitations is applied; sometimes a longer period than that prescribed by the statute is required; *in some cases the statute time is sufficient, and sometimes the rule is applied where there is no statutable bar. It is competent for the court to apply the inherent principles of its own system of jurisprudence, and to decide accordingly.*

"'A court of equity, which is never active in giving relief against conscience or public convenience, has always refused its aid to *stale demands*, where a party has *slept upon his rights and acquiesced* for a great length of time. *Nothing can call forth this court into activity but conscience, good faith, and reasonable diligence.* Where these are wanting, the court is passive and does nothing. Laches and neglect are always discountenanced, and therefore from the beginning of this jurisdiction there was always a limitation to suits in this court' (*Smith* vs. *Clay*, Ambler, 645)."

*Sullivan* vs. *Portland, &c., R. R. Co.*, 94 U. S., 806, 811–812.

Although the statute of limitations does not apply to a given case—

> "*A court of equity applies the rule of laches according to its own ideas of right and justice.*
>
> "The law of laches, like the principle of the limitation of actions, was dictated by experience and is founded in a salutary policy. The lapse of time carries with it the memory and life of witnesses, the muniments of evidence, and other means of proof. The rule which gives it the effect prescribed is necessary to the peace, repose and welfare of society. A departure from it would open an inlet to the evils intended to be excluded.
>
> *Brown* vs. *County of Buena Vista*, 95 U. S., 157, 160–161.

(Where a delay of about *three years* was held sufficient to defeat the claim.)

Again:

> "Courts of equity, acting on their own inherent doctrine of discouraging, for the peace of society, antiquated demands, *refuse to interfere in attempts to establish a stale trust*, except where the trust is clearly established, or where the facts have been fraudulently and successfully concealed by the trustee from the *cestui que trust*."
>
> *Godden* vs. *Kimmel*, 99 U. S., 201, 211.
>
> *Ger. Am. Seminary* vs. *Kiefer*, 43 Mich., 105, 112.

The mining and mining-property cases, which we hold to be especially applicable to the case at bar, have established a law unto themselves.

It is a well-settled rule that, in considering the question of laches—

> "We must take into account both the nature of the right which is claimed and of the property in which it is claimed."
>
> *Clegg* vs. *Edmonston*, 8 De G. M. & G., 787.

And this Court has also said:

> "The question of acquiescence and delay may often be *controlled* by the *nature of the property* which is the subject of litigation."
>
> *Hayward* vs. *Nat. Bk.*, 96 U. S., 611, 617–618.

The subject of litigation in this last case was *Calument and Hecla* mining stock. It, therefore, has a very strong bearing on the present case. *Less than four years* was there held to bar all claims in a Court of Equity.

Again, this Court has said that the rule of diligence is peculiarly applicable to *speculative* property, "which is liable to large and constant fluctuations in value."

*Grymes* vs. *Sanders*, 93 U. S., 55, 62.

In a similar case, it was said:

> "This is a mineral property, a property therefore of a mercantile nature, exposed to hazard, fluctuations and contingencies of various kinds, requiring a large outlay, and producing, perhaps, a considerable amount of profit in one year, and losing it the next. It requires, and of all properties, perhaps the most requires, the parties interested in it to be vigilant and active in asserting their rights. This rule, frequently asserted by Lord Eldon, is consonant with reason and justice."
>
> "Here is a mineral property, the subject of great uncertainty and fluctuation. After its character has been established with much difficulty, after a period of nine years, during which they rendered no assistance to the concern, a claim is brought forward by those who are now willing to share in its prosperity. It appears to me, that although this is a case to be decided in equity only, * * * it is impossible to say (consistently with my views of what are the principles of this Court), that the plaintiffs can be assisted."

*Prendergast* vs. *Turton*, 1 Y. & C., Ch. at pp. 110 and 111 (affd., 13 L. J., Ch., 268).

See also—

*Earnest* vs. *Vivian*, 33 L. J. Ch., 513.

*Evan's Appeal*, 81 Pa., St., 278 (a delay of *four and a half years*).

So in *Pollard* vs. *Clayton*, 1 Kay & J., 462,480, a delay of *eleven months* in filing a bill for specific performance of a contract relating to a fluctuating commodity, like coal, was held to be too long, and to be a bar to relief.

In *Twin-Lick Oil Co.* vs. *Marbury*, 91 U. S., 585,

588, 592–593, a delay of *four years* in filing a bill to set aside a sale and assert a claim to an interest in certain oil lands, was held a bar. This Court said, speaking of mining property:

> "The fluctuating character and value of this class of property is remarkably illustrated in the history of the production of mineral oil from wells. Property worth thousands to-day is worth nothing to-morrow, and that which would to-day sell for a thousand dollars as to its fair value, may, by the natural changes of a week, or the energy and courage of desperate enterprise, in the same time, be made to yield that much every day. The injustice is, therefore, obvious, of permitting one holding the right to assert an ownership in such property to voluntarily await the event, and then decide, when the danger which is over has been at the risk of another, to come in and share the profit.
>
> "While a much longer time might be allowed to assert this right in regard to real estate, whose value is *fixed*, on which no outlay is made for improvement, and but little change in value, the class of property here considered, subject to the most rapid, frequent and violent fluctuations in value of anything known as property, *requires prompt action* in all who hold an option whether they will share its risks, or stand clear of them."

In *Rule* vs. *Jewell*, 18 Ch. D., 660, a lying-by and delay of *six* years, was held fatal, KAY, *J.*, saying:

> "Whether it is called abandonment or estoppel seems to me to be indifferent. If it were necessary to call it abandonment, I would be quite prepared to hold that what was taken in this case [a lying-by for over six years] amounts to *abandonment* between the plaintiffs and thier coadventurers of any interest in this concern."

See also *Prendergast* vs *Turton*, 1 Y. & C., Ch. 98, *supra*.

The contention that Palmer's acquiescence in Loring's claims, set forth in Loring's letter of February 22, amounts to an *abandonment* or *forfeiture* of rights on the part of Palmer finds full support in the two cases last above cited.

See also—

*Allen* vs. *Allen*, 47 Mich., 74, 79.

*Pratt* vs. *Cal. Mining Co.*, 9 Sawyer, 354, 364–367.

*Harlow* vs. *Lake Superior Iron Co.*, 41 Mich., 583, 589.
*Haff* vs. *Jenney*, 54 Mich., 511, 514.

It is no answer to the applicability of these mining cases to say that in this case the value of the property has not subsided, but, on the contrary, has greatly increased. The law of laches is not determined by the result. It depends, as has been seen, in great degree upon the nature of the property, and it cannot be denied that this property was, in its nature, of the most precarious and uncertain value. During nine years that elapsed from the date of the purchase until Palmer, upon his examination upon the trial, testified that it was worth $100,000, there is no evidence whatever as to the value of the property at any time. By the fortunate circumstance of its contiguity to Calumet and Hecla, its value was finally developed and established; but it might just as well have gone the other way. It is the *uncertainty*, not the *result*, which constitutes the reason of the rule. Indeed, the fact of an *increase* in value is a reason for applying the rule. If it were not for the increase, we never should have heard of this suit.

The defense of laches was set up in Welch's answer (p. 39); but this was not necessary in order to enable us to take advantage of it.

The Court below appears to have seriously erred on this subject; for the learned Judge says (Opinion hereto annexed, p. 95):

> "But another complete reply to the claim of laches is, that no such defense is set up in the answer."

Laches, however, need not be pleaded.
*Sullivan* vs. *Portland, &c., R. R. Co.*, 94 U. S., 806, 811–812.
*Nettles* vs. *Nettles*, 67 Ala., 599, 601.

## Fifth Point.

We submit, therefore, with confidence, that the defense is completely established, that the position of the defendant is proved to have been not only sound in law, but that he has done all, and more than all, that justice and equity could have required of him, and that, after the complainant has gone back upon all his moral obligations in the premises, and has left the defendant to bear the whole burden of the adventure, he cannot, after having voluntarily acquiesced in that settlement of it for over seven years, at the end of which the property has come to be of great value, be heard in a Court of *Equity* to assert his present claim, and that, as the bill should have been dismissed—

*The decree appealed from should be reversed, with costs, and the cause remanded, with directions to dismiss the bill.*

JOSEPH H. CHOATE,
*Of Counsel.*

OPINION OF THE COURT BELOW.

BROWN, *J.*—The facts connected with the purchase of these lands are substantially as follows: From about the year 1854, the defendant Loring, complainant, and said Frue, had been jointly interested in the purchase of mining lands in the Lake Superior region, in the formation of mining companies, and in the holding and selling of mining stocks; from the year 1865 their respective interests in the joint investments had generally been equal; and that it had been the custom for defendant Loring to hold titles to the property and stocks belonging to the three parties jointly; that Loring, who appears to have been a man of large property, resided at Boston, Frue at Houghton, and Palmer at Pontiac, but the latter spent much of his time in the Lake Superior country. It also appeared that the three were jointly interested in a copper mine called the "Ossipee," whose lands were in the immediate vicinity of the lands on section 23.

Mr. Palmer, the complainant, being in the Lake Superior region in June, 1868, discovered the value of this land, and that it could be bought at what he considered a great bargain; he saw Mason, the owner, who resided at New York, but was then on a visit to Lake Superior, and negotiated a purchase of the land, the entire terms of which were agreed upon, and a memorandum drawn up for signature in "which Palmer and Frue, or Palmer and associates," were named as grantees; but Mr. Mason desired the contract to be drawn up in accordance with a form he had before used in like transactions, and which contained very strict terms of forfeiture in case of failure to make payment as prescribed in the contract. He had none of these forms with him; and, as he was in haste to get home, it was arranged between him, Palmer and Frue, who was also present, that on his return to New York, Loring should see him, and attend to the execution of the contract on behalf of the vendees; and if Loring should be absent, or decline or fail to attend to it, so that this could not be accomplished, that Mason should draw up the contract on his blank form, in

accordance with the terms already agreed upon between him and Palmer, and return the same to Palmer at Houghton, to be executed.

This purchase was planned originally by Palmer and Frue for *the purpose of putting the lands into the Ossipee Mining Company, of which they and Loring were principal owners, or using them in the interest of* that company, in exchange with the Calumet and Hecla Company for other lands adjoining the Ossipee. Loring was not present at this interview; and it does not appear that he knew anything about these lands or that they were for sale. Indeed, the inference is strong that he did not, except as he was informed of it by Palmer's letters, after Palmer had completed his negotiations with Mason for its purchase.

On June 18th, Palmer wrote to Loring that he had bought the lands for $20,000, $5,000 down; $7,500 in six months, and $7,500 in eight months, with seven per cent. interest on the last two sums. He says:

> "He will then send you the contract, and I want you to see it carried out in all respects. Mason agrees, if you are away, or do not do this, he will send it to me to do and carry out, as I have agreed to do. Mr. Mason has given me his word, in presence of Frue, that all this shall be done as he agreed, and that I shall, having the land, make his word as good as his deed. There was not time to do this before Mason left, and I want you to treat him in this matter without doubting him at all."

He further describes the land, and assures Loring of its great value.

On the following day he wrote him again at greater length, but substantially to the same effect.

On the 22d he telegraphed Loring that he had paid the $5,000 for him, and asked him to pay the same amount to Mason, and execute the contract. The $5,000 was, in fact, paid by Frue for Loring, upon a purchase made by Loring of what is called in the evidence "the Adams front." On June 27th Loring telegraphed to Palmer, stating that the contract was closed, and that he started for the lake that day.

In reply to Palmer's letters of June 18th and 19th, he swears that Mr. Loring wrote him, approving the purchase,

stating that "he was very much pleased with it, and that he joined us in the purchase."

Loring did not go to New York to meet Mason, as was contemplated; but Mason drew up the contract in form and signed it, enclosed it in a letter to one Perkins, a broker at Boston, with the name of the vendee left blank. Upon the payment of the $5,000 to Loring, Perkins wrote in his name as vendee—"Elisha T. Loring, Trustee."

Complainant's theory with regard to this case is, that at the time the contract between Mason and Loring was executed, he acquired a vested interest in an undivided third of these lands. Upon the other hand, defendant's theory is, that he never acquired such interest, but that it was expected that he might become interested to the extent of one-quarter, by the payment of that proportion of the purchase price.

I find no evidence tending to support the latter theory, unless it be contained in Loring's letter of February 22, 1869, in which he notifies complainant that if he wishes "to secure for himself" an interest in these lands, it would be necessary for him to remit his proportion of the cost prior to the 20th of March. But this language is neutralized by his letter of February 3d, in which he expresses the hope that Palmer would find some one to make payment for him, so that he could "retain" for himself an interest in 23. I lay no stress upon the particular words employed in either case.

The main question is, whether there is sufficient testimony to support the former theory that Loring took the title to a portion of these lands in trust for Palmer; and if so, what proportion? The contract, and the subsequent deed from Mason to Loring, ran to "Elisha T. Loring, Trustee." Whether that is sufficient to let in parol evidence of the character and extent of the trust, and the name of the *cestui que trust* is, *at least, a matter of doubt.* In *Railroad Company* vs. *Durant*, 95 U. S., 576, it was said that under a simliar deed running to the grantee "as trustee," without stating for whom or for what purpose he is trustee, parol evidence was admissible to establish the fact. This case came up from Nebraska, where the statute upon the subject of trusts is

precisely the same as ours; but no allusion is made by the Court in the opinion to the statute, and it is said it was not called to the attention of the Court in the brief of the appellant. But, in reply to this, it may be said that the learned judge would not have used the language he did if he had not supposed there was such a statute in existence; for, at common law there was no doubt that such a trust might be proved by parol. I have no doubt that he assumed that there was such a statute in Nebraska, as there is in almost every State in the Union, requiring express trusts to be manifested or proved by writing; and that the decision must have been made in view of such a statute. There is no doubt whatever that the designation of a grantee in a deed as trustee is sufficient to put a subsequent purchaser upon inquiry.

*Shaw* vs. *Spencer*, 100 Mass., 382.
*Bancroft* vs. *Consen*, 13 Allen, 50; 14 Allen, 523.
Perry on Trusts, sec. 814.

But *I find no other case holding that parol testimony is competent* to explain the use of this word to the extent in which it is said to be admissible in *Railroad Company* vs. *Durant*.

If such evidence be competent here, it removes, in my mind, all doubt in regard to the nature of this transaction, when taken in connection with the letters.

In an interview between Palmer and Loring at Houghton, held in July following the execution of the contract, the matter of consolidating the land with the Ossipee lands was discussed, and Loring was opposed to it. In this conversation he stated that they owned the land jointly, and would hold it. In this and subsequent interviews, not denied by Loring, the matter was referred to, and although at one time Loring endeavored to put off Palmer with a part of the Adams front purchase, he subsequently retreated from that, and assumed that their interests in this land were joint.

But it is not necessary to rely upon this testimony. The correspondence and *conduct* of the parties, taken in connection with their *previous dealings* and the use of the

word "trustee," seem to me very clearly to *justify the inference* that Palmer was entitled to a third interest in these lands. It is true the bill does not set forth the exact interest held by each; but it is claimed that the purchase was intended to be upon the joint account of three persons, and, in such case, the *presumption* is that all are to be interested equally.

Washburn on Real Property, 642.
Freeman on Co-tenancy, sec. 105.
Lindley on Partnership, p. 573.

It should be borne in mind that these parties had been *dealing in lands for years, and that their custom was to be equally interested;* that Palmer, in his letters of June 18th and 19th, notifies Loring that he had made the purchase, and that Loring, in reply, stated that he approved of it, and joined with them in it. I think this correspondence, taken in connection with the contract, is sufficient to show that it was the *intention* of these parties that they should be jointly and equally interested.

But it is argued that, under our statute, which requires, not as in the English statute and those of other States, that the trust shall be "manifested or proved" by writing, but that it shall be "fully expressed and clearly defined upon the face of the instrument creating it," the trust must be manifested in the instrument by which the trustee obtains title; in other words, that the trust must be *created* by this instrument, or, at least, in a formal declaration of trust, and that we cannot look at the correspondence of the parties or their subsequent admissions to establish the trust. Whether the use of this peculiar phraseology changes the law in relation to the establishment of trusts materially, is at least a subject of doubt. In one case, in Maine, it was assumed that it did; in one or two, in Wisconsin, it was assumed that it did not; but in neither of the States does the question seem to have been directly adjudged.

In *Jenkins* vs. *Eldridge*, 3 Story, 264, and in *Uran* vs. *Coats*, 109 Mass., 581, it was intimated, if not expressly decided, that the words *created* and *declared* were equiva-

lent to *manifested* and *proved;* and such is also the opinion of the Court in *Pinnock* vs. *Clough*, 17 Ver., 588. The word "created" certainly conveys to the mind a very different impression from the words "manifested" or "proved," and the distinction is clearly stated in *Forster* v. *Hale*, 3 Ver., 395. At the same time a strict adherence to the grammatical construction of these words might result in great injustice. Upon the whole, it seems to me that the word "created," as used in the statute, need not apply to the instrument under which the trustee takes the legal title, but may apply to any instrument or writing from which the terms of the trust may be gathered; and that, in construing such writing, all the surrounding circumstances may be considered. The language of section 4124, C. L. subdivision 5, taken in connection with 4718, indicates to my mind very clearly that no formal legal document is required to establish a trust, but the same may be said to be created by any instrument which manifests or proves it.

The allegation in paragraph 3 of the bill, that Loring sold stocks of complainants to meet the second and third payments upon the contract, *is not supported by the testimony.* There is no question but that the first payment of $5,000 was made by Frue. Before the second payment, in December, Palmer had an interview with Loring in Boston. He testifies that at this time the question of raising the funds to meet the December payment was talked of, and it was suggested that Palmer should sell certain smelting stock belonging to him, but standing in Loring's name, for this purpose, and that he made such sale for $15,000, the first payment of which, $5,000, was sent to Loring at New York on the 18th of December, the very day that the payment to Mason fell due. It is, however, expressly denied by Loring that there was any such suggestion that this smelting stock should be sold to meet the Mason payment; but, on the contrary, it was sold for another and distinct purpose—to meet Palmer's notes indorsed by Loring, which were then falling due. At this time, and for some time before, Palmer was indebted to Loring on account, and Loring had indorsed his notes for quite a large amount, and one of these notes, for $5,000, was to

fall due December 21st, and another one for like amount on the 3d and 6th of January. On November 25th Loring wrote to Palmer, suggesting the maturity of his notes, and asking how he was to provide the means to meet them. He also suggested that he should raise all the money possible before leaving for the East, by a sale or mortgage of his property, and that he come by the way of Waterbury before coming to Boston, and see what he could do in the sale of his smelting stock. The stock was sold and deposited to the credit of Loring in the bank, and Loring applied the amount to Palmer's credit upon his general account, apparently with his knowledge and assent, at any rate without objection from him. Accounts were subsequently rendered, showing these credits, and no corresponding charge for the money paid upon the Mason contract, and no question was ever made by Palmer as to their correctness in this particular.

From this time Palmer never intimated that anything more had been paid by Frue and himself, or either of them, than the $5,000 already mentioned. Loring writes him February 3, 1869, urging him to raise money for the purpose of making the payment to Mason about falling due, but Palmer makes no response. Loring writes again on the 22d of February, after having made the payment to Mason, stating clearly that as yet but one-fourth had been paid by anybody but himself. In his reply of February 26th Palmer does not deny this. So, too, in his postscript to the letter of March 8th, he does not claim any such payment previous to this time, but directs Loring to apply any means in his hands belonging to Palmer to that purpose. So in the letter to which this postscript was annexed, he states that Frue has paid for one-quarter, without claiming or intimating that he had paid anything himself.

*These facts show conclusively that no* portion of the $15,000 received from the *sale of the smelting stock was applied to the Mason purchase;* but, on the contrary, it was applied *to Palmer's general* account, and that such application was not objected to by Palmer.

*With regard to the sale of the Hecla stock, the proof is no less clear that it was not applied upon this purchase;* although, if the postcript to the letter of March 8th was

actually sent and received by Loring, it would have become his duty to make such application. In regard to this postcript there is a conflict of testimony most difficult to reconcile. Palmer swears that it was written upon a different sheet of paper from the main letter, but was enclosed in the same envelope. His daughter, however, who made and preserved a copy herself, thinks it was sent in a separate envelope; but Loring swears unequivocally that, although he received the letter, he did not receive the postscript. *It seems somewhat singular that, when the postscript was of so much more importance than the main letter, it should not have been the first thing that occurred to Palmer in writing it, and have been incorporated in the letter, instead of being a mere afterthought, as postcripts usually are; but, without imputing any perjury to the complainant or his daughter, I cannot find that the postcript was ever received.* Loring's reply of March 16th makes no mention of it, as it assuredly would have at once, if received.

Loring also denies that he received Palmer's alleged letter of February 26th, in a memorandum of which, preserved by Palmer, he says:

> "I have been willing to unite in any plan to mutually aid us, but failing in this, I cannot consent to lessen my interest in section 23."

As Palmer's recollection of this letter is very indistinct, and Loring explicitly denies receiving it, *I must assume also that this is not proved.* In his letter of March 6th Palmer advises Loring that he had better sell the one hundred shares of Hecla, and also expresses a wish that he should sell two thousand shares of Ossipee at five dollars, "with the land in 23, Ossipee ought to sell." If his postcript was actually sent, as stated, it seems a little singular that in this letter no reference whatever is made to applying the sale of these stocks to the Mason purchase. In his reply to this letter, under date of March 16th, he alludes to Palmer's payments that had fallen due on the 8th and 12th, and says that he is inclined to the opinion that necessity will compel him to follow Palmer's suggestion and sell Hecla stock before the month is out; and in his letter of the 23d he announces the sale at $80.

> "In accordance with your suggestion of March 16; and the same will appear to your credit in your account, soon to be forwarded, made up to April 1st."

In reply to this, April 5th, Palmer says he is glad he sold it; desires him to sell some Ossipee also; but makes no claim that it should have been credited upon the Mason purchase. In his account, subsequently rendered, the $8,000 received from the Hecla is placed to Palmer's credit, but no charge made for payment upon the Mason purchase, and this account was never objected to.

*I am satisfied, therefore, beyond all doubt, that complainant's case against Loring is not strengthened by virtue of any money paid upon the purchase.*

But finding, as I have done, that an interest in an undivided portion of these lands vests in Palmer at the time of his purchase, the question still remains as to the amount of such interest. Palmer swears they were to be equally interested, and I have already intimated such to be my own opinion. But Loring swears, that, at the time of the contract, he expected Frue and Palmer each to have one-quarter on paying his proportionate part of the purchase. What there was to induce this expectation does not appear. There is not a particle of testimony tending to show it, until the declaration of trust was executed in March, and transmitted to Loring. It seems that, in the latter part of the winter, Frue became distrustful of Loring, and thoroughly alarmed lest he should lose the amount already invested in the purchase. Notwithstanding that both he and Palmer testify most explicitly that each was to have a third interest, he seems to have been willing to accept a quarter, as representing the portion of the money paid by him, and in Jannary he wrote to Palmer that he had lost confidence in Loring in consequence of the sale of the Calumet stock; that he was afraid that he should lose the $5,000 he had already paid on section 23, and wished him to obtain from Loring an acknowledgment that he had paid it. Accordingly, in his letter of March 8th to Loring, Palmer asked him to send a statement that Frue owned an undivided quarter, "as he has paid that amount." In reply to this, and under date of March 16th, he forwards to Palmer the Mason contract, with an indorsement, which,

unexplained by parol testimony, for brevity, indefiniteness, and obscurity, may safely challenge comparison with any other instrument to which my attention has been called:

"BOSTON, March 16, 1869.

"Whereas, Thomas F. Mason has deeded to E. T. Loring, in trust, the lands described in the within document, and received therefor in payment the sum mentioned therein, with the interest; therefore be it known, that, for value received, I hereby acknowledge that C. H. Palmer or William B. Frue, one or either of them, jointly or separately, are the owners of an undivided one-fourth part of said lands; and that I hereby obligate myself, heirs and executors, to account to said Palmer, or his assigns, for one-fourth part received for the lands in question, whenever a sale shall be made of the same.

"ELISHA T. LORING."

But considering this declaration in connection with Palmer's letter of March 8th, it seems to me entirely clear that it was intended simply to secure a quarter interest to Frue, and that Loring promised to account to Palmer, or his assigns, *because he did not really understand whether Frue or Palmer, as between themselves, were to have this interest.*

The acceptance of this declaration and of the deed executed in pursuance of it, would undoubtedly preclude Frue from claiming a further interest. But I do not see that Palmer is thereby affected. He notifies Frue of his receipt; states that "Loring mixes the quarter bought at Houghton by you with my interest, and seeks to put me off with a quarter interest when the property shall be sold." The receipt of this declaration does not operate upon Palmer by way of estoppel, since Loring took no step in reliance upon it. And, while it was undoubtedly entitled to some weight as evidence, it is very largely outborne by the other testimony in the case as to the understanding had at the time the purchase was made. I look upon this declaration simply as a compromise accepted by Frue to secure his portion for the money paid. It results, therefore, that Palmer obtained a vested interest in a third of these lands.

*Has this interest ever been abandoned, extinguished, or*

*forfeited?* Loring, in his letter of February 22d, notified Palmer distinctly that, "If he wishes to secure his interest in the lands it will be necessary for him to remit his proportionate consideration prior to the 20th of March." As I have already said, there was no payment ever made by Palmer upon this contract; and it will be necessary to consider whether the rights of the *cestui que trust* can thus be terminated. The law is well settled that a person cannot be charged as trustee simply by notice. Mr. Perry, in his excellent and useful work on trusts, says, section 77:

> "If a trust is once effectually created by parol, it cannot subsequently be revoked or altered by the party creating it; for it is governed by the same rules that govern trusts created by writing."

The cases cited sustain this position. See also to the same effect:

*Swinburne* v. *Swinburne*, 28 N. Y., 564, 572.
2 Wash. on Real Prop., 507,

So, in enumerating the various methods in which a trustee may be discharged (section 921), such as by the expiration or execution of the trust, by decree of a Court, by agreement of the parties, by virtue of a power in the instrument, by death or substitution, by a sale of the property or conveyance of the parties, no mention is made whatever of a discharge by notice. In my opinion this land could only be relieved of the trust by a foreclosure of the complainant's rights, or by his assent to its extinguishment.

*Maxwell* v. *Fisher*, 34 Mich., 138.

*The evidence of acquiescence in Loring's claim of forfeiture is certainly strong;* and in a case where the evidence of the original creation of the trust was less conclusive and the value of the purchase more doubtful, I should feel constrained to dismiss the bill upon that ground. At the same time, silence is not necessarily proof of acquiescence. Palmer undoubtedly considered the purchase of great value; he seemed very anxious to

avoid a quarrel with Loring; but the testimony is clear that, up to the 22d of March, he was willing to make any sacrifice to preserve his interest. He may have thought he was foreclosed by his non-payment at that time; but I am satisfied that his acquiescence was not voluntary.

Nor do I think the complainant has been guilty of such laches as should disentitle him to relief. If the Statute of Limitations is applicable, it did not begin to run until March 20, 1869 (Perry, sec. 864). Each case must be determined by its own circumstances; and it is difficult, if not impossible, to lay down any general rule (Perry, 869). That public convenience will not allow old and stale claims to be investigated, when many of the parties and witnesses are dead, or their memories impaired, or their vouchers lost, for none of these obstacles exist here. Trusts have frequently been enforced after a much greater length of time; and there does not seem to me to be any valid reason in this case for saying that the complainant's rights are barred. *But another complete reply to the claim of laches is that no such defense is set up in the answer.*

*Hunter* v. *The Town of Marlboro*, 2 W. & M., 199.
*Brown* v. *Jones*, 2 Gall., 477.
*The Platina*, 21 Law Rep., 397.
2 Pars. on Ship, 363.

I think he is entitled to a decree upon the payment to Loring of his proportion of the purchase money, and any balance that may be due him upon his general account.

118-321

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# Supreme Court of the United States

OCTOBER TERM 1885.

No. 460.

ELISHA T. LORING and CHARLES A. WELCH,
Appellants,

*vs.*

CHARLES H. PALMER.

## POINTS

Submitted by Mr. EDMUNDS, of Counsel for Appellee.

THOMAS McGILL & Co., Law Printers, Washington, D. C.

# Supreme Court of the United States.

October Term 1885.

ELISHA T. LORING and CHARLES A. WELCH, Appellants,
*vs.*
CHARLES H. PALMER.
No. 460.

## Points submitted by Mr. Edmunds, of Counsel for Appellee.

The amended bill is in the Record, p. 23 *et seq.*

The substance is, that prior to June, 1868, Palmer, Frue, and Loring were and had been engaged in joint operations in mining lands and stocks in northern Michigan.

In that month Palmer, in Michigan, arranged with one Mason of New York to buy from Mason for the joint account, a part of section 23. The price and terms were agreed upon—$20,000. A draft of contract was made for the sale, but Mason preferred to use a form of his own in New York, but engaged to dispose of the property on the terms stated. Palmer then wrote Loring of the contract with Mason, enclosing the draft, and requested Loring to complete it. That Loring completed it, Frue furnishing $5,000 as a first payment; and Loring wrote Palmer accepting the proposition, and stating he had made the contract with Mason. The contract is set out, and obliges Mason to convey to Loring as trustee.

That afterwards, on meeting of the three parties, the sub-

ject was orally discussed and the large value of the purchase recognized, in respect of which, however, further sums up to $20,000 were yet to be paid.

That Palmer provided funds in various ways, and especially out of stocks and other properties in the hands of Loring, for his share of the purchase-money, and that Frue, paying no more than this first $5,000, finally settled with Loring and took a conveyance of one-quarter interest in the property. That Loring, out of the funds of Palmer and his own, paid Mason the full purchase-money and took a conveyance to himself. That Loring, being thus in funds and undertaking to get all the benefit himself possible out of the purchase, on 16th March, 1869, endorsed on the contract a statement that Palmer or Frue were owners of an undivided quarter of the lands, and agreeing to account to Palmer or his assigns for a quarter part thereof. That this acknowledgment was turned over to Frue as representing precisely the money he had at first paid in. (Record, pp. 23 to 30.)

The answer admits, in general, the previous transactions of the parties, and that Loring held stocks, &c., in his own name as trustee for Palmer and Frue in their operations, and that Palmer, in June, 1868, did agree with Mason for the purchase of the lands with the expectation that Loring would become interested therein together with Palmer and Frue. That Palmer wrote Loring and requested him to enter into a written agreement with Mason for the completion thereof. That sundry correspondence passed, but that many of the letters were destroyed in the Boston fire, whereby he cannot state whether there was any definite understanding in relation to the several interests. But that in consequence of the correspondence, and growing out of it, Loring did make the contract with Mason set out in the bill, and personally engaged to pay Mason the agreed price of $20,000. He denies the oral conversation alleged to

have taken place afterwards regarding their interests in the lands, but admits that it was the expectation that Palmer and Frue were to be interested in the purchase upon their paying their proportion of the purchase-money. He denies that he had funds or securities in hand to pay Palmer's proportion of the price, which was on time, but admits that he sold various stocks and securities of Palmer held by him as trustee to large amounts, but alleges that they were applied to general indebtedness of Palmer to himself in their transactions. He alleges that he notified Palmer that he must furnish more funds, or all his interest in the purchase would be lost, and that Palmer did not furnish the funds. And he therefore claims to hold the whole land as against Palmer (Record, p. 33 to 37).

The answer was traversed and the proofs taken. These proofs consist of the testimony of Palmer, Frue, Loring, and Mason and sundry letters between the parties. They are sufficiently set out and referred to in the principal brief. They demonstrate, with very little contradiction between the parties, that the enterprise of purchasing this particular land was intended and expected to be for the joint account of the three persons named. That Frue furnished $5,000 at the beginning, and that the assets of Palmer in the hands of Loring were to be used and devoted, so far as necessary, to the payment of Palmer's one-third share of the purchase-money to Mason. That Loring did realize on these various assets, and did complete the payments to Mason, and without Palmer's knowledge or consent did take a conveyance from Mason to himself alone and afterwards settled with Frue by conveying to Frue one-quarter of the property, and then conveyed, without consideration, the residue of the estate to Welch and other defendant.

The Circuit Court, on the pleadings and proofs, decreed that Palmer was entitled to one-third of the property and that Loring was a trustee for Palmer to that extent, and

directed an accounting of their transaction in order that whatever balance might be due to Loring in the transaction should be paid.

The accounting was had, and on a final report of the master (Record, pp. 440 to 447 inclusive) it appears that, including the payments of Palmer's share of the purchase-money to Mason, there was still due to Palmer $1,094.19, without interest being computed on the accounts. This report was not excepted to and was confirmed. (Record, p. 447.)

It thus appears that during the time of these transactions Loring had in his hands and control as agent and trustee for Palmer ample funds with which to pay Palmer's share of the purchase-money for the land.

The only question, then, is whether the admission in the answer of Loring and the written correspondence between the parties and the contract with Loring as trustee is sufficient to prove a valid trust in respect of the land of which Palmer so finally took a conveyance from Mason to himself.

## I.

The trust may be proved by any species of written evidence, and does not require any formal declaration or in-

strument. (49 Mich. Rep., p. 39, Compo *v.* Jackson Iron Co. See, also, notes to vol. 2 Howell's Annotated Statutes of Mich., p. 1447.)

## II.

The prior operations of the parties and the fact of the trade with Mason for this land being made by Palmer and Frue, and Loring being asked by letter and telegraph to complete the purchase, and his doing so and taking the contract of Mason to himself as trustee, and his admission in his answer that he did so on this state of written communication, demonstrated that a trust was intended and created in him by writings.

The only point really made by Loring was that Palmer did not furnish his share of the purchase-money, and that he (Loring) had, therefore, the right to appropriate the land to himself for this cause alone.

This point was insisted on before the accounts were taken. Now, an account being taken, it appears that Loring had in his own hands funds of Palmer all the time, subject to his control, more than adequate to satisfy all Palmer's one-third of the purchase-money. This is now demonstrated by final report of the master, not excepted to.

III.

The contract of Loring, as trustee, with Mason to convey to Loring in trust the land is in itself a full and sufficient declaration of the trust; and parole evidence is admissible to ascertain who the beneficiaries were (95 U. S., p. 576; R. R. Co. *v.* Durant, 100 U. S., p. 56; Cowell *v.* Springs Co).

IV.

Section 5571, Howell's Statutes of Michigan, (sub-section 9,) declares that:

"The preceding seventh section shall not extend to cases where the alienee named in the conveyance shall have taken the same as an absolute conveyance in his own name without the knowledge or consent of the person paying the consideration, or when such alienee, in violation of some trust, shall have purchased the lands so conveyed with moneys belonging to another person."

Now in this case there is no contradiction in the answer or evidence that the purchase was expected and intended to be on joint account of Palmer, Frue, and Loring; and in such case it is clear that Loring should have taken the contract from Mason to convey to all three. But without the knowledge of Palmer or Frue, Loring took the contract to himself, as trustee, without naming in the contract the other beneficiaries.

Afterwards, when having money enough of Palmer's to pay more than all of Palmer's share, he took a deed directly to himself without the knowledge or consent of Palmer. In so doing he brought himself directly within section 5571 of Michigan Statutes, and became a trustee for Palmer *ex maleficio.*

V.

Whatever may have been the difficulties when the decree was made below, before it appeared, as it now does, that Loring had sufficient funds of Palmer's to pay his share, there can be now none whatever, for there was in the hands of Loring sufficient funds of Palmer's to supply his whole share of the consideration to be paid to Mason for the land, and so there could have been no fault or laches whatever on the part of Palmer. And as it is admitted in the answer and proved by the papers, there was at first a lawful trust, duty, and obligation on the part of Loring, that trust would continue until Loring could get rid of it by showing a failure of duty or laches by Palmer. This is confessedly negatived by the master's report, showing that all Palmer's funds were in Loring's hands and at his disposal, and that he has in fact, keeping all the accounts himself, more than enough of Palmer's money to pay for Palmer's one-third interest in the land so to be acquired.

VI.

If Loring, in this state of circumstances, took the actual and legal conveyance from Mason directly to himself personally, and not in trust, (which does not distinctly appear in the papers,) then, within the express provision of the Michigan statute, Loring's conduct was a fraud upon the rights of Palmer, and is capable of being redressed by the method contained in the decree below.

GEO. F. EDMUNDS.

Office Supreme Court U.S.
FILED
MAR 15 1886
JAMES H. McKENNEY,
CLERK.

118-321

# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1885.

**No. 183.**

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ELISHA T. LORING AND CHARLES A. WELCH, APPELLANTS,

vs.

CHARLES H. PALMER.

---

**Appeal from the Circuit Court of the United States for the Eastern District of Michigan.**

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# BRIEF FOR COMPLAINANT AND APPELLEE

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ASHLEY POND,
Solicitor for Complainant.

HOYT POST,
ASHLEY POND,
GEORGE F. EDMUNDS,
Of Counsel.

# SUPREME COURT

OF THE

# UNITED STATES.

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| | |
|---|---|
| ELISHA T. LORING and CHARLES A. WELCH, *Appellants,* vs. CHARLES H. PALMER, *Complainant and Appellee.* | *Appeal from the Circuit Court of the United States for the Eastern District of Michigan.* *In Equity.* |

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## BRIEF FOR COMPLAINANT AND APPELLEE.

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This is a bill to have a trust decreed and enforced in favor of complainant, Charles H. Palmer, to the extent of an undivided one-third interest in 120 acres of land in Section 23, in Houghton County, Michigan. The trust is asserted to have arisen out of certain dealings between complainant and defendant Loring, connected with the purchase of said land from one Mason, and defendant Welch is made a party because he holds the legal title by virtue of a voluntary conveyance from said Loring, in trust for Loring and his two sons.

## Chronological History of the Suit.

**Dec. 20th, 1875.** The original bill was filed and process issued. (Record, pages 1 to 12.)

**Feb. 1st and 8th, 1876.** The defendants appeared. (Record, pages 15–16.)

**Feb. 25th, 1876.** The defendants separately demurred to the bill. (Record, pages 17 and 18.)

**Dec. 17th, 1877.** The demurrer was sustained. (Record, page 22.)

**April 8th, 1878.** The amended bill was filed. (Record, pages 23–33.)

**June 24th, 1878.** The defendants separately answered. (Record, pages 33–39.)

**July 19th, 1878.** Replications were filed. (Record, pages 39–40.)

**Nov. 27th, 1878, to Feb. 17th, 1879.** Proofs were taken. (Record, pages 41 to 117.)

**April 19th, 21st and 28th, 1879.** The case was heard and argued. (Record, pages 120–1.)

**May 23rd, 1879.** Decree was granted, declaring that defendant Loring received the said lands in trust for himself, one William B. Frue and the complainant, subject to the payment by complainant of his full proportion of the purchase price and interest thereon, and that defendant Welch took the title charged with and subject to said trust; and directing an accounting between complainant and said

Loring, covering all their dealings with each other, and that complainant pay into court any sum found due and owing from him to said Loring, and that upon such payment the defendants release and convey to complainant an undivided one-third interest in said lands. (Record, pages 123–4.)

**July 7th, 1879.** Sworn accounts were filed by each party with the Master to whom said cause was referred for said accounting; that of Loring showing complainant indebted to him, including the cost of one-third of said land, interest, taxes and care thereof, in the sum of $51,916.64 (Record, pages 135 to 138); that of Palmer showing Loring indebted to him over and above the cost of said one-third of said land, interest, taxes, etc., in the sum of $504.87, besides the value of certain stocks belonging to him and in Loring's hands. (Record, pages 130 to 134.)

**July 21st to 31st, 1879.** Loring was examined at length upon his account before the Master in Boston, and the depositions there taken occupy pages 138 to 313 of the printed record.

**Dec. 16th, 1879.** Loring moved the Court to open the decree and for leave to submit further proofs on the merits of the case—filing affidavits of himself and one Horatio Bigelow. These affidavits are found on pages 125 to 127 of the printed record.

**Mar. 11th, 1880.** Said motion was argued (Record, page 129); and March 15, 1880, the same was denied. (Record, page 129.)

**May 11th, 1880.** Loring asked and obtained leave to file an amended account, making affidavit that there were many errors in his prior sworn account. This amended account decreases his claimed balance to $27,503.01. (Record, pages 313 to 319.)

**May 15th, 1880, to Mar. 30th, 1881.** Further proofs were taken on the accounting. (Record, pages 322–429.)

**April 17th, 1882.** The Master filed his report and formal statement of the account, without computing interest or striking any balance. (Record, pages 429 to 435.)

**April 17th and 18th, 1882.** To this report both parties excepted in writing as to certain of the items. (Record, pages 435 to 438.)

**May 3rd and 4th, 1882.** These exceptions were argued before the Court and decided. (Record, page 438.)

**Sept. 16th, 1882.** The counsel for the respective parties entered into a written stipulation, which was filed in the cause (Record, page 439), and which specifies in detail how the Master shall state the account, in accordance with the decision of the Court on the aforesaid exceptions.

**Sept. 23rd, 1882.** The Master filed his report and statement of the account "upon the basis of the decision of the Court," upon the exceptions to his prior report. (Record, pages 440 to 446.) The statement of the account in this final report shows a balance in favor of complainant of $527.52, after charging him with the one-third of the full cost of the land, with interest, taxes and all expenses of care thereof. It does not take into account 500 shares of Kearsarge stock, still held by Loring, as he himself swears, in trust for Palmer, the cost of which is charged in said accounting to Palmer at $2.66 per share, making the aggregate amount of $1,333.33, and interest thereon from February 1st, 1867, with annual rests.

To this final report of the Master and statement of the account no exceptions were filed by either party.

**Oct. 30th, 1882.** Final decree was rendered, which recites the prior decree, the reference to the Master to make and state the account, the filing of his report, the filing of

exceptions thereto, the argument of said exceptions, the decision of the Court thereon, the re-reference to the Master to restate the account in accordance with such decision, the filing of the Master's report restating the account accordingly, finding Loring indebted to complainant in the sum of $527.52, and that no exceptions had been filed to said report; and thereupon confirms said report; finds that in addition to the amount found by said report to be due from Loring to complainant, Loring holds in trust for complainant 500 shares of the capital stock of the Kearsarge Mining Co.; and finally decrees that within thirty days from the date thereof, said defendants release and convey to complainant an undivided one-third interest in said lands, describing them, and that in default thereof said decree stand in lieu of such conveyance; and perpetually enjoins defendants from conveying, incumbering or disposing of said undivided one-third interest of complainant in said lands; and awards costs to complainant. (Record, pages 446 to 448.)

**Nov. 6th, 1883.** Defendants claimed an appeal from said decree, which was allowed, and bond of $500 ordered; and satisfactory bond was afterwards filed. (Record, pages 448–9.)

# Abstract of the Pleadings.

## Amended Bill.

1. In 1856 and for a number of years thereafter, complainant was engaged with defendant Loring and one William B. Frue, who resided at Houghton, Mich., in the purchase of lands in Upper Peninsula of Michigan, and in the formation of corporations and in the purchase and sale of stocks of said corporations engaged in mining in said Upper Penninsula; during said period such purchase and sale of lands and stocks were for the most part made in the name of said Loring as trustee, and the stock belonging to complainant and said Frue in the newly organized companies also stood in name of Loring as trustee; the title of said lands and stocks were so taken for convenience; and complainant and said Frue each paid Loring from time to time large sums of money on account of said transactions.

2. In June, 1868, complainant together with said Frue, purchased of Thomas F. Mason, of New York City, the lands in question (describing them); said purchase was intended to be on joint account of said Frue, complainant and Loring, each sharing equally, provided said Loring should desire an interest therein; at the time said purchase was made said Mason, Frue and complainant were at Houghton aforesaid, but said Loring was at Boston, and had not been advised

## Answer of Defendant Loring.

1. It is true complainant was at one time engaged with this defendant and said Frue in the purchase of lands in the Upper Peninsula of Michigan; in the formation of corporations and in the purchase and sale of mining stocks in said Upper Peninsula, and that for the most part such purchases were made and the stocks held in the name of this defendant as trustee for all the parties in interest; but in all instances said lands and stocks were disposed of agreeably to the order of the parties in interest, and the proceeds applied as directed by such parties, and that nothing is due complainant on account thereof from this defendant.

2. Admits that some time in June, 1868, complainant made some verbal agreement with said Mason, then of the city of New York, to purchase said lands, and that said bargain was made with the expectation that this defendant would become interested therein together with the complainant and said Frue; that the price of the lands was $20,000, and that no written contract was then made between the parties in relation thereto.

that the purchase was comtemplated. Complainant agreed to pay $20,000 for said land, but as Mason had not with him the form of land contract usually used by him, he declined to execute a formal contract for such purchase until he returned to his home in the city of New York. A memorandum of the transaction was however made at the time, which was submitted to Mason and assented to by him. Complainant wrote and addressed a letter to Loring at Boston, enclosing said memorandum, and instructed Loring to go to New York on the return of Mason and obtain from him a formal contract for the sale of said lands in accordance with the agreement aforesaid with complainant, and proposing to Loring that said purchase be made upon the joint account of himself, Frue and complainant; said letter was mailed to Loring from Houghton, June 20, 1868, and on June 29, 1868, complainant received from Loring a telegraphic message accepting the proposition made to him as aforesaid, and stating that he had closed the contract. About this time complainant received letters from Loring highly approving said purchase and reiterating his acceptance of the proposition made to him as aforesaid. Annexes copy of contract between Loring and Mason which is marked "Exhibit A." It runs to Elisha T. Loring as trustee. Said purchase was so made in the name of said Loring and said contract executed to him as vendee thereunder as trustee, in trust

That complainant did write this defendant in relation to said purchase and requested him to enter into a written agreement with said Mason for the completion thereof, and that some correspondence passed between complainant and this defendant in relation thereto, but as many of the letters received by this defendant and some of the letter books with copies of his own letters have been destroyed by fire, he is unable to state the character of the correspondence or whether there was any definite understanding expressed thereby in relation to the several interests that complainant, said Frue, and this defendant were expected to have in said purchase, or as to the mode and time of payment; and he therefore neither admits nor denies the correspondence as set up in second paragraph of the bill, but leaves complainant to prove the same.

Admits that in consequence of such correspondence and growing out of it, this defendant did make the contract with said Mason, "Exhibit A," by which this defendant became personally obligated to said Mason to purchase said lands and to pay therefor the sum of $20,000 according to the terms of said contract, and that he did at the time pay $5,000.

or the joint benefit of himself, said Frue and complainant.

3. In July, 1868, Loring, Frue and complainant, at Houghton, agreed to and with each other, that said lands should be held and owned by them jointly, the title standing in the name of Loring as trustee in that behalf; and Frue had before then paid Loring an amount sufficient with moneys belonging to Frue then in Lorings's hands to pay his portion of the purchase money. In November or December 1868, on consultation by complainant with Loring, at Boston, in reference to providing funds to meet the remaining payments due upon said property, it was determined to sell stocks belonging to complainant standing in the name of Loring as trustee; and complainant a few days thereafter, and prior to December 18, 1868, sold stocks belonging to him, in Waterbury, Connecticut, for $15,000, and instructed Loring to draw for the same, and shortly thereafter Loring informed complainant he had collected said money and paid to Mason the said installment upon the purchase of said land.

Loring then held stocks and securities of conplainant of the market value of upwards of $8,000, which he sold in the early part of 1869, and received therefrom upwards of $8,000; and during the entire years 1868 and 1869 he held in his hands moneys belonging to complainant, more than sufficient to pay all advances made by him for complainant on account of any and all transactions in which they were engaged, including said purchase of said lands from said Mason.

3. Denies that in July, 1868, complainant, Frue, and this defendant agreed that said lands were to be held by them jointly as alleged; but admits that it was the expectation that Frue and complainant were to become interested in said purchase upon their paying their proportion of the purchase money. Also admits that Frue paid this defendant towards said purchase $5,000 soon after the making of said purchase, and states the manner of such payment; but avers he did not know whether said payment was made on account of said Frue or said Palmer, or both, and that this is the only sum that has ever been paid by either complainant or said Frue towards the purchase money of said lands. Denies that it was ever determined between complainant and himself to sell any stocks belonging to complainant and standing in name of this defendant as trustee, and to apply the same or any part thereof upon the purchase money of said lands, or that he did then or ever sell any such stock for such purpose, or that the proceeds of such sale were so applied, or that he ever had in his hands moneys belonging to complainant sufficient to pay the advances made by him to said Mason on account of said purchase.

Avers that during summer, fall and winter of 1868 and spring of 1869, complainant was greatly embarrassed, and this defendant had previously endorsed his notes for a large amount, of which complainant had the proceeds, and

that defendant sold certain stocks of complainant to enable him to take up said notes, and did so apply the proceeds, a full account of which was rendered to complainant at the time, and that no portion of such proceeds was ever or was to be applied toward payment for said land; on the contrary, this defendant paid to said Mason the entire of said purchase money without ever receiving from complainant, directly or indirectly, a dollar to be so applied, except said $5,000 received from said Frue; that when the last payment was about due in February, 1869, it was extremely inconvenient for this defendant to make that payment, and he was extremely desirous complainant should become interested in said purchase and furnish a portion of the purchase money, and he repeatedly wrote complainant calling upon him to advance the money, and sought to get the time of payment extended for the purpose of seeing whether complainant could not raise funds, but in this effort he failed; and that complainant being unable to raise any money, not only consented, but desired to give up all interest he had expected to have in said land, and that this defendant should pay for and own all said land except the one-fourth Frue had already paid for.

4. In March 1869, Loring, in a letter addressed to complainant, enclosed the said contract between Mason and himself as trustee, for the purchase of said lands, and to said contract was annexed a memorandum agreement or

4. Avers that on or about March 8, 1869, complainant wrote this defendant to send a statement that Frue owned an undivided one-fourth interest in said lands, as he had paid therefor; that in compliance with this re-

declaration of trust, in the hand writing of said Loring, and a copy of said contract and said declaration of trust is annexed as "Exhibit A," Referring to said declaration of trust, complainant shows that his interest is therein defined to be one-quarter instead of one-third. but he shows that no modification or change of the terms of the original agreement for the purchase of said property was ever made by and with the consent of complainant, but that said change was made by said Loring upon his own motion.

quest this defendant sent a copy of the Mason contract and annexed thereto a declaration of trust in favor of said Frue or said complainant, of which said Exhibit A is a copy; and that in April following complainant sent this defendant a written statement that said Frue was the sole owner of the interest mentioned in said declaration of trust, and that he had no interest therein.

5. In May, 1869, Loring executed and delivered to Frue a deed for an undivided one-quarter of said land, and a copy of such deed taken from the registry of deeds is annexed, marked "Exhibit B;" and simultaneously therewith, an agreement was entered into between Frue and Loring, each granting to the other the option of purchase in case either should desire to sell, and a copy of such agreement is annexed, marked "Exhibit C."

5. Admits that he executed the deed to Frue and the contract as alleged, a copy of which is annexed to the bill; insists he had full right to make said contract, and that complainant was at the time fully informed in relation to the nature of said contract.

6. In July. 1875, said Loring executed, acknowledged and delivered to defendant Welch a deed conveying to Welch in trust for the purposes therein named, an undivided three-fourths interest in said lands, and a copy of said deed taken from the registry of deeds is annexed, marked "Exhibit D." [The trusts mentioned in said deed are as follows, viz.: to hold the same subject to the covenants and agreements in said contract with Frue (Exhibit C) until the death of said Loring, and if he die before fifteen years

6. Admits he executed the deed to defendant Welch, copy of which is annexed to the bill.

from date, until the end of said fifteen years, and then to transfer and convey the same to Loring's two sons, Thatcher and Charles W., and their heirs forever; but if during said time Loring shall request it in writing, or if after his death his sons shall so request, said Welch shall sell and convey the same, so far as he can in conformity with the said Frue contract, and in case of such sale the proceeds to be conveyed at Loring's death, or if he have before died, at once, to said sons and their heirs, the proceeds being kept properly invested until such time; said Welch by acceptance of such deed not to be bound to pay any taxes or expenses of any sort or kind upon the premises.]

Referring to said deed to Frue, "Exhibit B," complainant avers there is nothing in it conflicting with or impairing his rights in said land, whether as determined by the agreement at the time of purchase from Mason, or as stated in said declaration of trust, "Exhibit A;" and that although he was advised of the execution of said deed, "Exhibit B," shortly after its date, he was not aware of the terms of the contract "Exhibit C" until June or July, 1875.

7. Since the final payment in February. 1869, upon the Mason contract, complainant has had no other dealings with Loring, and has repeatedly attempted to procure an adjustment and final settlement of his account with him, but has been unable to do so.

In October, 1871, Loring instituted a suit against him on the law side of this court, but never brought it to trial, and in June,

7. Denies that complainant has had no dealings with him since February, 1869; avers that after that time he paid sundry notes which he had endorsed for complainant, and received certain moneys on complainant's account towards said endorsement, leaving, however, a very large balance in defendant's favor, and that he has repeatedly tried to come to a

1874, voluntarily discontinued it without notice to him or his attorney.

While complainant had for a long time feared Loring was intending to cheat and defraud him of his interest in said lands, he had no evidence thereof until July, 1875, when he learned of the deed to said Welch; said deed in express terms asserts the ownership of an undivided three-fourths of said land as absolute, and not in trust for said Loring and complainant. Complainant has just reason to fear said Welch may execute a conveyance which will defraud complainant of his rights unless restrained by an order of this court.

8. The interest of complainant in said lands is of the value of $20,000 and upwards.

The bill prays as follows:

*a.* For answers — not under oath.

*b.* That the deed from Loring to Welch, so far as it conveys the undivided one-third of said land belonging to complainant, be decreed to be in violation of complainant's rights, and that said Welch be directed to release and convey to complainant an undivided one-third of said land, and in default thereof, the decree of Court stand in lieu of such conveyance, and invest complainant with the full right, title and interest to such undivided one-third of said land.

*c.* That defendants pending this suit be enjoined from conveying or in any manner encumbering said undivided one-third.

*d.* For general relief.

*e.* For writ of injunction and writ of subpœna.

The bill is verified by the oath of the complainant.

final settlement, but without success.

Admits that he instituted the suit against complainant as alleged, and discontinued the same because he ascertained complainant was utterly irresponsible and worthless.

8. Denies that complainant has any interest whatever in said lands.

9. General demurrer clause, alleging as grounds that the trust attempted to be set up in said lands does not appear to have been reduced to writing, and is not one that can be enforced under the statute of Michigan, in relation to uses and trusts; and prays same benefit of this defense as if he had demurred to the bill.

The answer is not verified.

## Preliminary Considerations.

While the printed record looks large, all but 124 of its 451 pages are taken up with the testimony and proceedings on the accounting; and the real questions involved on this hearing are quite simple, and the facts bearing upon them are not very numerous and not much involved in dispute.

We assume that no question upon the accounting remains open for the consideration of this Court. The proceedings on this branch of the case, as heretofore recited, were such as to make the decree, in so far as the accounting was concerned, a consent decree. The statement of the account in the final report of the Master was made in accordance with a specific stipulation of counsel. based upon the decision of the Court upon exceptions to his prior report; and said final report was confirmed without exception or objection; and thereby all right to object thereafter was foreclosed.

We shall come to the consideration of the questions left open for discussion here, then, with the defendant put in the position, not simply of being bound by an adverse finding to that effect, but of positively conceding through his counsel by stipulation in writing, that he has not only been fully paid for the one-third interest claimed by the complainant in said land, but in addition has all these years been indebted to complainant in a considerable sum of money. This concession was not a matter of grace or favor, but was made from a conviction that the statement of account was right and could be demonstrated to be right. The fact is, this statement of account is based almost entirely upon the testimony of Mr. Loring himself, who was examined for about ten days at his home in Boston, where he had access to everything that could aid his recollection of the transactions, and during that examination he became convinced from the documents presented to him, and the circumstances called to his attention, that his claim, so strenuously asserted and reasserted before, that complainant was largely indebted to him, over and above the price of his share of this land, was all a

hallucination. See his affidavit (Record, page 126), and the affidavit attached to his amended account. (Record, page 313.)

The only importance of this matter on this appeal rests on the fact that the correspondence which we produce to make out and strengthen our case on the main issue is permeated with Loring's assertions, which it now appears were absolutely without foundation, that complainant is heavily indebted to him. On the hearing at the Circuit the complainant was handicapped by that circumstance, which he could then meet only by his bare assertion that he expected to be able on the accounting to prove that he did not owe defendant, but on the contrary defendant owed him.

Now it is much safer, if it can be done in advance, to prevent a false impression getting any start, than to rely upon being able to eradicate it after it has once taken root. With this in mind we have said what we have about the result and effect of the accounting, in order to prepare the minds of the Court to disbelieve and disregard all statements in Loring's letters as to complainant's large indebtedness to him.

*To illustrate:* Loring, Frue and complainant, were, with several others, interested in the purchase of lands and forming three mining corporations, known as "Ossipee," "Kearsarge" and "Iroquois." The lands were purchased and companies formed through Loring, who acted as treasurer of the "pool" or "syndicate," as it may be termed, and as such received and disbursed all moneys that were paid in by the associates. The proper and correct account of this whole transaction appears in the Master's Report on pages 445–6 of the record, and shows a balance in favor of complainant of $566.67; and which moreover is an exact copy of Loring's own amended sworn account filed with said Master and found on pages 318–19 of the record. This account was not kept in this form by Loring, nor was it entered on his books in any form; but a memorandum

account was kept by him in Palmer's name on a sheet of paper, of which "Exhibit 48" on pages 179–182 is a copy. This is what Loring in his correspondence calls Palmer's "Land account," and is spoken of in the evidence as the land account or the omnibus account. This account was kept by Loring in complainant's name against his protest, as Loring himself substantially admits. It shows a balance against complainant September 1, 1867, of $11,105.81; which by December 31, 1867, is increased by interest alone to $13,443.05, and by March 31, 1869, (see Record, p. 206) is swelled again to $15,042.19. This last amount is the exact sum which Loring in his letter of June 8, 1869 (Record, page 97) asserts to be due him on land account, "and no mistake about it." And this amount is increased to $15,761.07 in his letter of September 4, 1869, on pages 98–9 of the record.

The substantial basis for this fictitious claim of upwards of $15,000 consists of the identical transactions which he now correctly states as above set forth, showing a balance against him of $566.67. This illustration will enable the Court to appreciate at their proper value all assertions in the correspondence of any indebtedness to Loring on the "Land account."

*Again:* Two notes for $5,103.33 each, dated respectively December 5th and 9th, 1868 (Exhibits 15 and 16), together with the agreement concerning them (Exhibit 14) were introduced in evidence with something of a flourish of trumpets by defendant on cross-examination of complainant. (Record, pages 93–4). These two notes and the agreement appeared in the bill of particulars of the claim on which Loring brought suit against complainant in 1871, as alleged in the bill. (See "Exhibit 125," Record, pages 393–5.) These notes also appear in the statement of account attached to Loring's deposition used on the first hearing of this cause in the Circuit. (Record, page 116.) But Loring's own letter of June 15, 1869, ("Exhibit O," Record, page 101), and which had been introduced in evidence prior to the taking

of Loring's said deposition, concedes that the entry of these notes was an error, and that they had been paid and charged under dates 6th and 15th "July." [This word *July* is a misprint here for *Jany.*, as the original exhibit shows.] Both Exhibit 125 (page 393) and said statement of account attached to Loring's deposition (page 116) charge complainant, in addition to the two $5,103.33 notes under date of March 8th and 12th, with the two $5,000 notes under date January 6th and 15th. But Exhibit 90 (Record, pages 204 to 206) is a transcript from Loring's account as actually kept by his book-keeper, Lafayette Burr, and it shows these two notes of $5,103.33 charged under date March 8th and 12th, and balanced by a credit of the amount with interest under date of April 30th. The two $5,000 notes are also charged under dates January 6th and 15th. From the testimony of Mr. Burr, the book-keeper, it appears that the credit entry of April 30th was made to correct the error in charging these very two notes of $5,103,33 each, and was made on the day-book or blotter at that date, and posted to the ledger not later than May, 1869. (Record, page 310.)

What comment is needed upon the credibility of the assertions of this defendant in his letters as to complainant's indebtedness to him, in the light of this deliberate, sworn misrepresentation of the accounts, which his own books, and his own letter already in evidence so completely refuted.

*Again:* There were introduced in evidence above twenty $5,000 notes signed by complainant and endorsed and paid by defendant. Complainant's claim is that these notes were signed in blank and left with defendant to use as he should require them. Defendant denies that they were signed in blank, or that more than two were signed at any one time. This, however, is not material. The point is, that defendant in his correspondence treats these notes as obligations which as between him and complainant the latter was bound to provide for and pay. No question is made that Loring procured all these notes to be discounted, and received and used

all the proceeds; and afterwards paid them all. In his account with complainant he credits him with the proceeds, less the discount, stamps and expenses, (which amount in the account to $3,800) and charges him with the amount paid at maturity, and figures interest on each item from its date. These notes were used by Loring in excess of any requirement of complainant's account, and of course to that extent were as between these parties, accommodation notes.

This shows the fallacy of defendant's insisting, as he does in his letters, that complainant shall provide funds outside of those in defendant's hands to meet these notes as they mature.

One other preliminary consideration is necessary to a full appreciation of the real issue between these parties, and that is their relation to each other, prior to and at the time of the transaction in question.

The bill alleges that from the year 1856 complainant, Loring and Frue were engaged in the purchase of lands, and the formation of corporations, and the purchase and sale of stocks of said corporations engaged in mining in the Upper Peninsula of Michigan, that such purchases and sales of land and stocks were for the most part made in the name of said Loring as trustee, and that the stocks belonging to complainant and said Frue in the newly organized companies also stood in the name of said Loring as trustee, and that this was done for the purpose of convenience.

The answer admits "That it is true that the complainant was at one time engaged with this defendant and William B. Frue in the purchase of lands in the Upper Peninsula of Michigan, in the formation of corporations and in the purchase and sale of mining stocks in said Upper Peninsula, and that for the most part such purchases were made and the stocks held in the name of this defendant as trustee for all the parties in interest."

The proofs show the extensive character of these purchases. These three persons were pioneers in the development of the copper mining interests of Michigan. They were interested together in the following important copper mining companies, viz.: "Atlantic," "Franklin," "Pewabic," "South Pewabic," "Adams," "Hecla," "Ossipee," "Kearsarge," "Iroquois," and "Torch Lake," and also in the Waterbury Copper Smelting Works. In several cases the purchases of land in the first instance were not made by Loring, but the title was conveyed to him as trustee. The evidence shows that the stocks were not only "for the most part," but invariably held in the name of Loring as trustee. The evidence does not show so clearly about the purchases of lands for the earlier companies, but the purchases for the "Ossipee," "Kearsarge," and "Iroquois" began in the fall of 1866 and continued to the fall of 1867, and were made partly by Palmer and Frue, and partly by Loring; but the titles were all conveyed to Loring as trustee. These lands cost $125,000. Loring was made president, and his book-keeper Burr, secretary and treasurer of each of these companies. The books were in Loring's hands. The stock belonging to Frue and complainant was not issued at all, but stood on the books in Loring's name as trustee. (See his own testimony, Record, pages 254, 212.)

"Torch Lake," "South-half," or "Penn," was all purchased by complainant and paid for out of the common funds, and the title conveyed to one Sibley, who executed a declaration of trust in favor of Loring and such persons as he should appoint. This was in May, 1867, and it involved an expenditure of $25,500.

During this period and continuing until the transaction in question, Loring received from both Frue and complainant large sums of money. The figures of complainant's account from the fall of 1865 to the end of 1869 aggregate upwards of $175,000, besides the "Land account," which aggregates upwards of $140,000.

It will be seen, then, that the relations of these three persons were intimate and confidential, and their dealings with each other extensive.

## Statement of Facts.

On the 18th day of June, 1868, while the confidential relations above referred to still existed, complainant and Frue met Thomas F. Mason, at Houghton, Michigan. Frue then resided at Houghton, Palmer at Pontiac, Michigan, and Loring at Boston, Massachusetts. Palmer for a number of years had spent much of his time in the copper mining district, with Frue, prospecting for and investigating copper lands. Mr. Mason resided in New York, but owned mineral lands in this district, and was at this time on a visit at Houghton. Complainant and Frue, without consultation with Loring, who was then in Boston, negotiated with Mason for the purchase of the land in question. The terms of purchase were all agreed upon, and a written contract in duplicate drawn for execution; but as Mason wished to use a form of contract which he had at home and which contained stringent provisions for forfeiture in case of failure to meet the deferred payments, and as he was about to return home, he did not execute the contract then. Complainant stated to Mason that Loring would be interested with himself and Frue in the purchase if he chose to do so. It was thereupon arranged that on Mason's return to New York, Loring would go there from Boston and execute the contract, or that Mason should send it to Boston to be executed; and if there was any failure Mason was to send it to Houghton for execution.

The contract that was drawn up at Houghton for execution has since been lost or destroyed, but both Frue and complainant testify to its contents. There is a stipulation on page 121 of the record, admitting its loss and waiving objection to testimony of Frue and complainant as to its contents. Frue's testimony is very general, to the effect that the terms

of this contract were substantially the same as those of the contract afterwards executed by Mason and Loring trustee. Complainant's testimony is that the vendees named in this contract were "Charles H. Palmer and William B. Frue," or "Charles H. Palmer and associates." He states the contents particularly as to terms, which agree with those of the Loring trustee contract. This evidence is undisputed. One copy of this contract was taken by Mason, and the other was enclosed in a letter to Loring.

On the same day that this bargain was made at Houghton, complainant wrote to Loring, and the letter was produced by the defendant upon notice, and introduced in evidence, and is found on pages 67–8 of the record. It was as follows, viz:

KEARSARGE MINING COMPANY,
CALUMET, MICH., June 18th, 1868.

*E. T. Loring, Esq.:*

DEAR SIR: I have this day bought of T. F. Mason the following lands in the Hecla Section 23, namely, the north half of the northwest quarter, and the northwest quarter of the southwest quarter, in all 120 acres, for $20,000, $5,000 down, $7,500 in six months, and $7,500 in in eight months, with seven per cent. interest on the last two sums. I had the contract drawn up and was ready to pay him the $5,000 down; but as he had just come from Ontonagon and the boat was to leave in two hours, he preferred to return to New York and write such a contract as he had given Hurlburt on his purchase, and have you execute the contract and pay him the $5,000. He will then send you the contract, and I want you to see it carried out in all respects. Mason agrees that if you are away or do not do this, he will send it to me to do, and to carry out as I have agreed to do. Mr. Mason has given me his word, in the presence of Frue, that all this shall be done as he agreed, and that I shall have the land—making his word as good as his deed. There was not time to do this before Mason left, and I want you to treat him in this matter without doubting him at all. I will write you again this evening and send the contract I had drawn up. He has a copy of it. with the terms, as I have stated. This matter is very important. The purchase will add to the Ossipee five dollars per share at once in

actual value. I do not want anything said of this at all. You will see by this that we shall get a division with the Hecla so as to get what will make a mine out of it by itself. We can make the Calumet vein by this over 3,200 feet in length. The purchase is very important. I send this by the hands of Randall, and will write again to-night by mail. Do not mention this. If you can, I would go to New York and see Mason and close this at once. In no case will this be neglected. It is a fortune to us if well handled. Mason has the contract which I drew up, and will show it to you. But this will tell you what is to be done. I give a sketch of the land. When I present the whole matter you will see how important it is to us. We can take from Hecla from 1,550 to 2,305 feet in length, and still give them out of this purchase double the amount of mining value that we get from them. The fact is, this ground bought is worth more to them than the ground next to Ossipee. It is for this reason that I do not want anything said till we have fully considered this matter together and see how we shall open it to Shaw. This is a rough sketch of the land bought. The vein is nearer to it than I have given the dotted lines, as if made to divide between them. Hecla would be free then to give us 100 acres, 50 of which would carry the vein, and we should give them 100, all of which would carry the vein. You will see the importance of this matter, and that we should not say anything till we consult. The Hecla is rich and we can make the Ossipee as rich.

Truly yours,
CHARLES H. PALMER.

As complainant promised in this letter he did write again, at once, a letter dated June 19th, 1868, which he says was deposited in the post-office at Houghton, and by regular course of mail would go out Saturday the 20th.

This letter is also produced by defendant upon notice, and introduced in evidence, and is found on pages 68-9 of the record. Defendant's counsel admits that it contained the duplicate enclosure therein referred to. This letter reads as follows, viz.:

"KEARSARGE MINING COMPANY,
CALUMET, MICH., June 19th, 1868.

*E. T. Loring, Esq.*,

DEAR SIR: I have drawn a map of the land bought of

Mason. The Hecla owns all in the section, but the 40 and 80. You may say that Shaw will not do anything about it. We can wait as long as he can, as we have enough to mine till the Hecla needs some of this land. The least I would take now would be the 80 next the Ossipee, through which the lode runs, and most likely with the right of mine perpendicular to the vein in the direction of line A. B. I do not think best now to say anything to Shaw about this. I have given on the other side the land in the Calumet section 14, bought by Hurlburt. I could have bought this a year ago last winter for $40,000, including the 120 now bought. If I had done so, we could now have this land in 23 for nothing, as Shaw will have to buy Hurlburt out even at $100,000. Stanton, who now has the Huron, is intending to buy Hurlburt out in 14, and I wish you would see him when he returns, and urge him to do it. Hurlburt bought of Mason some 1,200 acres of land in 14, 15, 11, 22, and 28. If Stanton can get the land in 14, 480 acres, and the land in 22, on the east half, I should like it, as the land in 22 is desirable for us. Hurlburt offered the land in 14 to Stanton for Huron stock. This would be a good thing for Stanton. I shall write Stanton on this subject. This matter is not to be talked about. I had a long talk with Stanton, and he is inclined to buy it. He has let Hurlburt have money.

I send the duplicate of the contract I gave Mason. Mason is to write a contract like his contract with Hurlburt, and send to you. Mason talked this matter over with Frue and myself, and says we shall have this land as agreed, and that his word is as good as his deed. I trust nothing will be left undone to carry this out, and you had better go to New York and see it done. We shall get out of Hecla all I have indicated. The land we would exchange is more convenient on surface and underground for them than what they would give us. It will be under their machinery and improvements. This is a great thing for Ossipee. You had better telegraph me as soon as this is done, as I shall be most anxious about it. I wrote you to-day and sent by Randall, and I write this by mail. I shall put a note on this for Burr to open, in case you should be absent. On the $5,000 to be paid down, pay interest if Mason wants it. If Burr reads this, I wish him to see all is done which he can do. Send the $5,000 in case you are not there to execute the papers, saying that you will execute them, and return them as soon as you get home, as they can be sent

to you. I do not want anything by which Mason can get out of this. He agreed that if there was any hindrance on your part, to send them to me to execute.

The S. P. is doing finely—30 tons a week. To-day 50 tons have been shipped, and by Monday morning there will be at the smelting works 60 tons unsmelted. I think we have a sure thing in the S. P. We must make a family concern of Ossipee, and I would not sell any stock in it. We can make it put on its own importance. This we will do. I see this matter clearly. I write in haste, and do not read over. Truly yours,

CHARLES H. PALMER.

Be particular to say nothing about Stanton's wishes. We need not buy any Hecla unless upon good time and satisfactory prices. We shall have a Hecla of our own. I think the S. P. will improve upon what she is now doing. The 40 acres is less than 350 feet from line of vein. In case you want us to raise $5,000 here write us or telegraph, and we will use it for the mine."

On Monday, June 22nd, complainant telegraphed Loring. Defendant declined to produce this telegram though admitting he had received notice to produce it. (Record, page 70.) But fortunately Palmer's letter to Mason of June 27th, and which was produced by Mason and put in evidence in connection with his deposition (Record, pape 62), states the contents of that dispatch fully, and complainant testifies, on page 70 of the record, states it correctly, viz.:

"On Monday, the 22d, I telegraphed Mr. Loring that I had paid here for him $5,000, and asking him upon the receipt of either of my letters to pay the same amount to you, and execute my contract with you."

On Friday, the 26th, complainant again telegraphed Loring to the same effect and asked a reply. (See Palmer's testimony, page 70, and his letter to Mason, page 62 of the record.) This dispatch defendant also declined to produce.

June 26th complainant wrote Loring, and the letter was produced by defendant on cross-examination of complainant (Record, page 91), as follows:

"Mason's contract important. Answer. I hope you will get the contract with Mason executed. Frue and I

have arranged to pay Edwards $5,000 on the 4th of July, so that you can pay Mason $5,000."

June 29th complainant received from Loring a telegram dated June 27th, saying the contract was closed, and that he was to start for the lake that day. See Palmer's letter to Mason of June 29th, 1868 (Record, page 63), and Palmer's testimony, page 70.

Loring must have received one or both of complainant's letters on June 25th, as he wrote that day to W. Hart Smith (who Mason testifies was treasurer of the Quincy Mining Co., of which Mason was president; Record, page 59), and also telegraphed him the same day, asking to be advised when Mr. Mason returned. (See this letter on page 62 of the record.)

The next day Mason wrote from New York to T. Henry Perkins, his correspondent at Boston, as follows:

"I send herewith contract for sale of 120 acres of land which I wish you to [———] Mr. Loring, and have him execute either for himself or Mr. Palmer (I made the trade with Palmer); fill in the name of whichever Mr. L. desires, and deliver to Mr. Loring upon his paying you $5,000. If Mr. Loring is not prepared to comply, you will not press the matter, but return the papers. I was tempted to sell by the offer, but perhaps I made a mistake; probably I might obtain more from the Hecla Company by holding long enough. Mr. Palmer requested the transaction kept private for the present, so you will please say nothing about it." (Record, page 61.)

It seems from the testimony of Mason (Record, pages 58–9) that the contract "Exhibit A," attached to the bill, was prepared in New York, leaving blank the name of the vendee, or party of the second part, and forwarded to Boston to Mr. Perkins in the letter of June 26th, and that the name of "E. T. Loring, trustee," was filled in at Boston, in the blank left for the name of the vendee, in the handwriting of Mr. Perkins, and was executed by Mr. Loring as trustee, and returned with the $5,000 first payment to Mason at New York. Mason's entry of that payment is as follows:

"June 29, 1868. T. Henry Perkins, $5,000, for payment on Palmer's contract." (Record, page 59.)

The original contract is attached to the deposition of Mr. Frue, and an examination of it corroborates Mason's testimony that the name of the vendee was left blank and was filled in at Boston in Mr. Perkins' handwriting. It will be observed also that this contract was ante-dated June 18th, the day the bargain was concluded between Mason and complainant at Houghton.

It appears from Mason's deposition (Record, page 58) that he had never had any conversation with Mr. Loring or any bargain with him in relation to this property prior to sending the aforesaid letter to Perkins; and Palmer's letter to Mason (Record, page 63) states that complainant had never said anything to Mr. Loring in regard to the purchase of this land; and the two letters of June 18th and 19th from complainant to Loring indicate that Loring knew nothing of this land or its contemplated purchase before receiving these letters. Loring's answer, paragraph 2 (Record, page 34,) admits that complainant wrote him in relation to said purchase, asking him to enter into a written agreement with said Mason for the completion thereof, and that "*in consequence of such correspondence and growing out of it, this defendant did make the contract with said Mason,*" etc., and in his deposition (Record, page 112) Loring says he made the contract with Mason *at request of complainant.*

The fact undoubtedly is that this land was purchased, just as the Ossipee and Kearsarge and Torch Lake lands were, as the correspondence introduced in evidence by Loring clearly indicates, entirely upon the judgment and knowledge of complainant and Frue, derived from their personal investigation and examination of the copper bearing lands in that vicinity.

Complainant's letters of June 18th and 19th while treating the purchase as one made by himself, clearly indicate that it was made upon joint account of Palmer and Frue in

the first instance, and that Loring was at liberty to join them in the purchase, if he so elected. They indicate too, that the purchase was originally planned by complainant and Frue with the view of afterwards putting the lands into the "Ossipee," of which they and their friends were principal owners; or of using them in the interest of that company in exchange with the Calumet and Hecla for other lands adjoining the Ossipee.

Between the 25th and Loring's departure for the Lake on the 27th, Loring wrote complainant in relation to this purchase. These letters we called upon him to produce. His answer, paragraph 2, admits that some correspondence passed between him and complainant in relation to this purchase, but avers that as many of the letters received by him and some of his letter books have been destroyed by fire, he is unable to state the character of this correspondence, or whether there was any definite understanding expressed thereby in relation to the several interests. This answer is signed not by Loring, but by his solicitor. [The fire that is here referred to occurred in 1872.]

Almost every scrap of writing connected with this transaction, as well as with the accounting after January 1st, 1868, *except these important letters* and two or three unimportant despatches, is produced. That Loring kept letter press copies of all his letters is clear from the entire evidence; and he produces several. There is no evidence fairly tending to show that he could not produce these. They were called for by complainant together with the others. The others were produced; but as to these the counsel says (Record, page 71): "*I am not willing to produce them.*" The pretext of inability set up in the answer is abandoned, and the refusal is based solely upon *unwillingness.*

In *Seymour v. Freer*, 8 Wall, 217, Justice Swayne, commenting upon the failure to produce letters, says: "None of these letters have been produced. Why not? The inference is a fair one, to say the least, that they contain nothing unfavorable to the claim of the appellee. This negative feature of the case is not undeserving of consideration."

At all events, the refusal to produce these letters on the ground of *unwillingness* confirms the testimony of complainant as to the contents of one of them (Record, page 71), viz:

"Mr. Loring in his letter approved of this purchase; was very much pleased with it, and stated that he joined us in the purchase."

Frue testifies to having seen the letter, but does not remember its contents. (Record, page 46.)

After both Frue and Palmer had given their testimony, Loring was sworn as a witness in his own behalf, and he nowhere disputes or denies that the contents of that letter were correctly stated by Palmer; in fact, he does not allude to the letter or its contents.

In the early part of July, 1868, Loring was at Houghton, and met complainant and Frue, and discussed the advisability of putting this land into "Ossipee." Frue was strongly in favor of it, and Loring was opposed to it, and thought there was more money in it to hold it; and in that connection said: "*We own this jointly and we will hold it for the present.*" They also talked of its value, and agreed that it was a great bargain at $20,000. (See Frue's testimony, Record, pages 46–7.) Complainant's own version of this interview is the same, and is found on page 72 of the record. Loring nowhere denies this interview, or even alludes to it in his testimony.

Complainant had another interview with Loring at Houghton, in October, 1868, in which the subject matter of the Mason contract was discussed, and complainant informed Loring that Frue had paid the $5,000 to Edwards for him on the Adams front, and that this $5,000 was to apply on the Mason purchase to Frue's credit. (Record, page 73.) Loring says of this interview, simply that he has no recollection of any conversation with complainant at that time touching the purchase in question. (Record, page 112.)

[The substantial facts as to this payment of $5,000 by Frue are admitted in Loring's answer, paragraph 3, Record, pages 34–35.]

During the year 1868 and for some time thereafter, Loring was in embarrassed circumstances and in great straits for money to meet his obligations. Frue loaned him 100 shares of Calumet stock to be used as collateral on which to borrow money to aid him, and he sold that stock within fourteen days. This made Frue lose all confidence in him. (Record, page 49.) Loring's letter of November 25, 1868 (Record, pages 91–2), indicates the difficulty he had in raising money. His letter of February 3, 1869 (Record, page 94), mentions $11,000 coming due that month. His letter of February 22, 1869 (Record, pages 74–5), speaks of his needing $25,000 to meet payments coming due within the next thirty days, on account of the company (South Pewabic) on which he is endorser. His letter of March 23, 1869 (Record, page 95), complains that the stringency of the money market still continues even worse than before, that he has been obliged to pay nine per cent. interest, and hard work to get money at that. His letter of June 15, 1869 (Record, pages 101–2), tells of his having near $60,000 due on which he is obliged to pay eight per cent. interest, and on some of it even nine per cent. His letter of September 4, 1869 (Record, pages 98–9), speaks of his indebtedness to be met of $38,000, on guarantee of Adams stock; and despairs of paying his honest debts unless he can collect every dollar due him; and indicates heavy losses to the South Pewabic Company.

It was during this period of his distress that he raised on Palmer's notes and used for his own purposes upwards of $100,000.

Complainant testifies (Record, page 79) in reference to an interview with Loring, at Boston, in December, 1868, as follows:

"Loring was a good deal straitened in regard to South Pewabic matters at that time, and that was the reason of my going to Boston; and of course this was a matter of solicitude between us, and I suggested to Mr. Loring that he use my notes for making the second payment on this purchase

in 23. He said South Pewabic had so shattered him that he could not do it, and as a last resort suggested the selling of my smelting stock, to which I consented, for the purpose of making that payment."

Loring had written complainant at Pontiac, November 25, 1868 (Record, pages 91–2), advising him of the difficulty of raising money, and of notes coming due the middle of December, and continuing along to the middle of February, suggesting that he raise all he can before coming East, saying: "By doing thus you may in part avoid the great sacrifice on your interest at Houghton," [evidently referring to his interest in the land in question], and suggesting that he come by Waterbury and sell his smelting works stock there.

This stock was sold December 9, 1868. (Record, page 79.) Loring got advice of the sale at least December 18, 1868, and telegraphed complainant at New York, where it seems Kingsbury (the purchaser) then was, directing the complainant to pay the money into Ninth National Bank, New York, to credit of North National Bank, of Boston (Record, page 93, Loring's letter of December 18, 1868). Only $5,000 was paid at that time, and this amount was paid December 18th, as directed in above telegram (Record, pages 80–1, and 90–1). The second payment on the Mason contract fell due December 18, 1868, and was paid by draft of North National Bank, Boston, on Ninth National Bank, New York, sent by Loring in letter of December 17th. (Record, pages 115, letter of Loring to Mason, December 17th; and Record, page 63, letter of Mason to Loring, December 18th.)

Complainant asserts, and Loring denies, that this stock was sold for the purpose of providing funds to pay the amount falling due on the Mason contract on December 18th. It is perhaps not very material, but it is apparent that this is not all an after-thought on the part of the complainant, for in his letter to Frue, written April 5th, 1869 (Record, page 54), before any controversy had arisen between complainant and

Loring at all, he says, "I have myself paid Loring since I came down $23,000, having sold my smelting stock at a great sacrifice, in order to pay my full interest in 23." The $23,000 here spoken of was undoubtedly the $15,000 for the smelting stock, and the $8,000 for the Hecla stock, hereinafter mentioned; the latter having been sold in March.

In reference to the interview in Boston in December, 1868, Loring, in his deposition, in an answer which is not responsive to the interrogatory put to him, after stating that he saw Palmer in his office in Boston, in December, before the second payment was made to Mason, and agreed to take the payment of the $5,000, which Palmer said had been made by Frue on account of the Adams Mining Company, as payment on account of one-quarter of Section 23, volunteers to add, "and that I should hold three-fourths for myself, unless a further payment was made by him or Frue." (Record, page 112.) This is distinctly denied by complainant on page 117 of the record, where he testifies that there was no agreement or conversation at that time, or any other time or place, that Loring should hold three-quarters of Section 23, unless more money was paid. And Loring's statement that such agreement was made at this interview in December, 1868, is clearly refuted by his own letters written to complainant after that date; to which we shall call attention later. And though Loring in his answer (Record, page 36) avers that complainant not being able to raise any money to meet the last payment to Mason, not only consented but desired to give up all interest that he had expected to have in said land, and that Loring should pay for and own the entire of said land, save the one-quarter which had already been paid for by said Frue; he nowhere testifies that any such consent or desire was expressed, or agreement made, except what he testifies to as above as having occurred in December, 1868.

In January, 1869, it seems complainant applied to Mason by letter for an extension for three months of the time for

payment of the final installment on his contract. January 30th Mason wrote Loring referring to complainant's request for such extension, and said he would prefer not to do so. (Record, page 64.) Loring not liking the word "prefer" wrote Mason for a more definite decision. See his letter of February 3rd, 1869. (Record, page 94.) February 2nd Mason wrote Loring, definitely declining to extend the time. (Record, page 64.) This letter Loring enclosed in his letter to complainant of February 3rd. (Record, page 94.) In this letter Loring says he regrets this decision, that he has a large sum of money to raise, and adds:

"On top of these comes this payment to Mason, which I was really in hopes you would find some one to do it on terms that you could *retain* for yourself a large interest in 23. The ways and means of raising this money is as yet altogether uncertain, but hope I shall be able to do it without selling any your stocks at present."

It seems that on February 8th complainant wrote Loring a proposition to make to Mason and that Mason called at Loring's office and the proposition was made to him, and on February 15th Mason wrote from New York to Loring, (Record, pages 76 and 64) declining the proposition. On February 22nd (Record, page 74) Loring writes to complainant acknowledging receipt of his 18th and 8th, stating that Mason called at his office, "when," he says:

"I made in virtue of your letter this proposal to him, viz.: That you would sell him 1000 shares Ossipee at net cost, on condition he would retain one-third interest in Section 23; stating I would then retain one-third, you and Frue the other."

And he encloses Mason's reply declining the proposition. He expresses his disappointment at this result; speaks of the difficulty he had in raising the money to make the final payment to Mason, and the amount he has yet to raise to meet other obligations; says he has paid Mason in full and got the deed, and adds:

"I therefore deem it my duty and an act of courtesy towards you to notify you that whatever additional propor-

tion you wish to secure for yourself in Section 23, it will be necessary for you to remit the amount of the cost of such additional portion as you desire prior to the 20th of March; otherwise I shall consider as mine, and retain the three-fourths interest in Section 23, which I have paid for."

Complainant testifies he answered this letter on the 26th, and that he kept no letter-press copies of any of his letters, but made a memorandum on the envelope in which Loring's letter of the 22nd came of the answer which he wrote; which he produced and read as follows: "*I have been willing to unite in any plan to mutually aid us, but failing in this cannot consent to lessen my interest in Section 23.*" (Record, page 76.) Loring denies receiving this letter.

Complainant testifies he wrote a letter to Loring on March 6th, 1869, and the letter is produced by defendant upon notice. (Record, page 77.) In this he speaks of the difficulty of selling property, and of his prospects of making sale, and adds:

"I shall do the best I can. You had better sell the 100 shares of Hecla. I see it is selling for $80. I wish you would sell 2,000 shares of Ossipee. Sell it at $5. I had rather bye and bye buy in again than to be in debt. I want to sell anything I can sell. *With the land in 23*, Ossipee ought to sell. It is cheap; and it must sell at some time, if not now."

Complainant wrote Loring March 8th (Record, page 78), which letter is produced by defendant upon notice. He testifies (Record, pages 78–9) to having enclosed in this letter a postscript of which he kept a copy and had it verified by his daughter Virginia. His daughter also testifies to the same effect. (Record, pages 110–111.) The postscript reads as follows:

"P. S. Since writing you the enclosed letter to-day, I have referred to yours of the 22nd ult., and I write this to say to you that I cannot consent to your holding the remaining three-fourths of Section 23, excepting as subject to my one-third, as originally agreed upon; having as you know sold my smelting stock to aid both of us in securing our interests in the most valuable purchase we have made; it

would be especially unjust and inexcusable for you in this way to assume the exclusive benefit, when your own interest is derived solely through me, as condition of your coming into the purchase. Therefore I must insist, if you have not already done so, that you first apply to my interest any means in your hands belonging to me."

Loring denies explicitly having ever received any such postscript. (Record, page 114.)

As corroborative to some extent of the rather unusual course of adding a postscript on a separate sheet upon a distinct subject, the Record shows another instance brought out by the testimony of Loring. (Record, pages 156–7.) He says the undated writing, Exhibit 18, at top of page 157 of the record, was enclosed in complainant's letter of September 18, 1869. The letter of September 18th is found on pages 99–100 of the record, and has no reference whatever to the subject matter of the other writing enclosed in it or to the letter to which that is a reply.

In his deposition (Record, page 112) Loring swears: "At the time of said contract" [Mason's] "*I expected William B. Frue and Charles H. Palmer to be interested with me, Frue to have one-quarter and Palmer one-quarter, each paying his proportional part of the purchase.*"

We have already stated all the correspondence which preceded this contract, and it is plain there is nothing in it to justify Loring in assuming that either Palmer or Frue were willing he should dictate what the respective interests should be, or that his interest should be one-half; and "at the the time of said contract" the only payment that had been made was advanced by Frue. Nor is there anything in the Record anywhere to indicate that this "expectation" which he now swears to was ever communicated to either Palmer or Frue. He is then at most swearing here only to the unexpressed operations of his own mind; and the record indicates pretty clearly that even the "expectation" is all an afterthought.

Loring in his answer is very cautious on this point. He admits (Record, page 34) that some correspondence passed, but avers that as some of his letters were destroyed by fire he is unable to state the character of the correspondence, "*or whether there was any definite understanding expressed thereby in relation to the several interests that the said complainant, the said Frue and this defendant, were expected to have in said purchase.*" On giving his deposition almost the last thing before the hearing, after having found we were unable to produce any letter, or compel him to, that definitely fixed in writing the respective interests, he makes bold for the first time to swear to this mental apportionment of interests. There is nothing in writing bearing on this subject more clear than what is contained in Loring's letter of February 22nd, where he says he proposed on Palmer's behalf to Mason that he should take of Palmer his Ossipee stock at net cost and retain one-third, while Loring retained one-third and Palmer and Frue together one third.

Both Frue and Palmer testify to a clear understanding in July, 1868, that their interests were to be equal. The first time and the only connection in which a quarter interest was ever mentioned between the parties, was when Frue asked for something to show for the $5,000 he had paid on the purchase. Then, of course, as $5,000 was a quarter of the $20,000 purchase price, the amount of the interest which he received corresponded with the proportion which he had paid of the whole purchase price.

Frue testifies (Record, page 49) that when he learned that Loring had sold his Calumet stock contrary to the understanding upon which it was loaned to him, he became very distrustful of him and lost all confidence in him and wanted something to represent the money he had paid on the purchase. He says (Record, page 51) that the paper which he got was not in accordance with his understanding of what his interest was to have been, and adds: "At the time of the purchase or shortly after that, it was the under-

standing that each held a third interest." Complainant's testimony is to the same effect. (Record, page 117.)

Their interests in their prior joint investments were generally equal, or very nearly so.

The correspondence which resulted in the granting of the quarter interest to Frue, corroborates the testimony of complainant and Frue in this regard.

Frue wrote complainant March 6, 1869, (Record, page 74) acknowledging his of the 18th (February), and saying: "You, however, neglect in your letter to mention anything about the paper asked for showing my interest in the land purchased. I would like to have you attend to it as soon as possible." The prior letter containing the request here referred to could not be produced. It was evidently written prior to February 18th.

Frue testifies (Record, pages 48–9): "I had written Mr. Palmer that I wanted something to show my interest in that property; and I was very much exercised at the time from a letter that had come from Mr. Loring which almost convinced me that Mr. Loring was about to grasp everything and hold it within his hand without regard to the rights of others."

March 8, 1869, complainant wrote Loring (Record, page 78) saying: "I wish you would send me a statement that Captain Frue owns one undivided one-fourth interest in the 120 acres of 23, as he has paid that amount. I want this so that he will have no cause to feel uneasy about it." March 16th, 1869, Loring replied, (Record, pages 81–2) adding in a postscript on the margin: "Enclosed I forward the bond given by Mason, with an endorsement that I trust will meet your wishes." The enclosure here referred to was the contract with Mason for the land in question, and the endorsement on it was in Loring's handwriting, and was signed by him, and read as follows:

"Boston, March 16, 1869. Whereas, Thomas F. Mason has deeded to E. T. Loring in trust, the lands described in

the within document, and received therefor in payment the sum mentioned therein, with the interest, therefore be it known, for value received, I hereby acknowledge that C. H. Palmer or Wm. B. Frue, one or either of them, jointly or severally, are the owners of the undivided one-fourth part of said lands, and I hereby obligate myself, heirs and executors, to account to said Palmer or his assigns, for one-fourth part received for the lands in question, whenever a sale shall be made of the same."

April 5, 1869, complainant wrote Frue, (Record, page 54) from which it appears that trouble was brewing between Frue and Loring, from the latter's claiming that Frue's Ossipee stock had been pledged as collateral to Palmer's "land account." In this letter complainant says:

"I have from Mr. Loring a written statement in regard to a quarter interest in 23, which I asked him to make out to you. In this paper he mixes the quarter paid by you at Houghton with my interest, and seeks to put me off with a quarter interest, when the property shall be sold. In regard to the quarter paid by you at Houghton, I had notified Loring of this distinctly in October last, when at your house, and have written him since to the same effect, so that he knows beyond any mistake, that you are entitled to a quarter on account of this payment," and on the margin adds: "I will send a paper for one-quarter of 23 paid by you, to-morrow."

The next day complainant wrote Frue again, (Record, page 55) enclosing the Mason contract with the aforesaid endorsement thereon, which complainant had received from Loring, saying:

"I send you the paper referred to in my last. I do not think it is necessary, as Mr. Loring is fully aware that you paid for him at Houghton $5,000, which was to apply on the purchase of 23. As you are entitled to this independent of any interest of mine in the hands of Mr. Loring, I have tried to make this much sure to you in what I have said in this paper. You will understand that your interest in 23 has nothing to do with mine. You will insist as you paid the $5,000 for Mr. Loring, upon his acknowledging it to you and taking his agreement to that effect."

March 23d, 1869, Loring wrote complainant (Record, page 95) calling attention to the fact that he had no reply to

his letter of the 16th, and advising him of the sale of his Hecla stock at $80, in accordance with his suggestion of March 6th. The proceeds of this Hecla stock are credited in the account as of March 20th, 1869, the very date fixed by Loring in his letter of February 22d. (Record, pages 74–5.)

April 5th, 1869, complainant wrote Loring, (Record, pages 95–6), saying:

"Your letter containing the 23 contract, and of March 23d, came to hand while I was away from home. I have sent the contract to Frue, who alone is the owner of the undivided one-fourth of 23. This I told you in Boston."

And after referring to the assessments on S. P., mentioned in the letter of March 23rd, adds:

"In regard to my own money matters, I will say to you this, if I can have time I can bring them out straight. I must have some time to do it."

In May, 1869, Loring was at Houghton, and on the 22nd, deeded to Frue the undivided quarter of the lands in question, (Record, page 29), and executed the contract Exhibit C. attached to the bill, (Record, pages 30-1.) Palmer testifies, (Record, page 84), that this agreement Exhibit C first came to his knowledge about the time of the commencement of this suit. This is nowhere disputed.

May 21, 1869, Loring wrote to complainant from Houghton, (Record, pages 82-3), appointing a meeting in Detroit on the 28th. An interview was had at the Russell House in Detroit, at about the time appointed, (Record, pages 83-4.) Complainant testifies that at this interview, Loring said he had had a fearful time with Frue, and that Frue had threatened to have him arrested; that Frue had agreed to wait thirty days to let him return, before commencing any proceedings against him; and also spoke about the stock which was the matter of dispute between them. He said he had deeded to Frue a quarter interest in 23, and that he regretted it, and regretted that complainant had aided Frue to that quarter. Complainant then told him he knew

Frue had paid $5,000, and was entitled to his interest, and as Frue had asked complainant to get something to represent that $5,000, complainant could not do otherwise than he had done. Loring said he would rather complainant should have had half with him than Frue anything; and complainant replied that his interest was one-third. Loring requested complainant to write Frue to moderate him. In compliance with this request complainant did write Frue, May 30, 1869, (Record, pages 55-6), urging him not to begin any suit till all else failed, and saying it would be disastrous to all their interests to move as he contemplated.

Loring testifies, (Record, page 115), as to the interview in May, that no claim at that time was made by complainant to any interest whatever in the purchase of Section 23.

June 8, 1869, Loring wrote complainant (Record pages 96-7), advising him of his safe arrival home, and of his examination into their accounts, and claiming complainant owes him $9,449.97, *over and above* $15,042.19, on land account, and *no mistake about it.* June 10, complainant replies, (Record, pages 97-8), pointing out where a mistake of upwards of $10,000 had been made. June 15th, Loring writes again (Record, pages 101-2), admitting the error and enclosing statement of account, showing balance against himself of $10,804,32, with two $5,000 notes outstanding. July 6th, complainant wrote (Record, page 98), again referring to mistake and interview at Detroit, etc.

Further correspondence during July and August, 1869, passed between the parties as follows, but it contains nothing pertinent to the present issue, viz: July 15th complainant wrote from Houghton, (Record, pages 154-5); Loring replies July 22nd, (Record, pages 155-6). August 9th, complainant writes again, (Record, pages 193-4); August 30th, Loring replies, (Record, page 156.)

September 4th, 1869, Loring writes complainant, (Record, pages 98-9), enclosing accounts made up to 1st Sep-

tember, and claiming a balance of upwards of $15,000, consisting almost entirely of the imaginary balance of the false land account, and says: "I deem it all important to give you ample notice that this account *must be settled*, at the latest period possible for me to wait for it, on the first day of September 1870." September 18th, complainant replies (Recor, pages 99-100), writing mainly of other things, but as to the acccounts, saying: "I shall try and come up to your views in making payment by September, 1870; I shall do all I can."

The correspondence indicates pretty clearly that complainant was not aware at this time how grievously he was imposed upon by the manner of keeping this land account. He testifies (Record, pages 85-6), that he objected to the account being kept in his name when it was so commenced; that it embraced the interests of 20 or 30 persons. He was asked: "From the manner in which that land account was kept, was there any difficulty in your determining how your matters stood upon the account itself?" and answered: "There was a difficulty, because it required a knowledge of everybody else's account, which I had not. Of course it would be blind to anybody unless they kept the account themselves, and knew the relations of everybody to that account." He testifies again (Record, page 103), that he was not even then able to separate out from that account the part which pertained to him individually, or to state accurately how that account ought to stand.

Complainant was no accountant, and as he testifies (Record, page 332), was very slow to understand accounts, paid very little attention to these accounts, and especially this land account. He testifies (Record, page 109), that he never noticed until quite recently the fact that the interest was figured at different rates on this land account, that is, seven per cent. on the debtor side and six per cent. on the credit side.

During all this time Loring had in his hands stocks standing in his name as trustee and belonging to complainant, as follows: 2,595 shares of Ossipee, 1,000 shares of Adams, 500 shares of Kearsarge, and 3,500 shares of "South half" of Sections 35 and 36, and also a large quantity of each of these stocks belonging to Frue, all of which he claimed to hold as collateral to complainant's land account. All these he advertised for sale at auction, on September 28th. at Boston, the printed notice of which sale appears at page 199 of the Record. He undertook to send copies of this printed notice to complainant, but the proofs are clear that neither of these notices reached complainant until after the date of the sale.

Early in October, 1870, Loring met complainant in Detroit, and then informed him of the auction sale. He testifies (Record, pages 158–9), in reference to this sale, that he subseqnently learned from his attorneys that this auction sale "*lacked some legal technicalities of the law*," and he annulled the sale, took the stock into his own hands; and that in October, 1870, he stated to complainant in Detroit, that he had bought all the stocks "of the pretended sale of collaterals" (*sic*) and had it in his possession,and would be happy for him to settle his accounts and take his stock. He also says (Record, page 200): "I then assured Mr. Palmer that I would guarantee that the entire stock sold should be placed at his disposal on settlement of my account." He also says (Record, page 210): "They were subsequently tendered to him."

Now there is no question that this statement is unqualifiedly false. Complainant testifies (Record, page 329): "He did not say any such thing to me"; and (Record, page 330), "He never stated to me but what he had sold them;" also, that he (Palmer) did not then know that Loring controlled the stocks, and that they were never tendered to him, except so far as a letter in evidence shows.

The correspondence commences again with October 5th, 1870 (Record, page 329,) a letter written by Loring at De-

troit, after he had parted with complainant. It requests complainant to endorse and forward a certificate of stock which was enclosed. October 10th complainant replied (Record, page 200), enclosing the certificate and saying he had forgotten it stood in his name. The certificate of stock and endorsement are found at pages 174–5 of the Record. October 12th, Loring writes (Record, page 200) acknowledging receipt of the stock and endorsement, and saying:

"I mentioned to the auctioneer the remark you made to me in Detroit, viz.: that you did not receive the advertised notice of sale of collaterals until a few days before the sale took place, by reason of your change of residence. He replied this made no material difference, and remarked if there was any dissatisfaction on your part he would guarantee that the parties who purchased it would transfer the stock back to you on your paying the price at which it sold and the expenses, as they were quite indifferent about it. I wish you could find some one who would do this for you, and pay the balance of assessments due the company, which I have been obliged to assume."

This letter is the one referred to by complainant as the only tender or guarantee ever made to him concerning these stocks. It completely negatives any such tender as Loring testifies to having been made at the interview in Detroit.

October 13th, Loring writes again (Record, page 366), enclosing an account, in which he charges interest up to date and credits the proceeds of this bogus auction sale at $6,177.07; also encloses the account of sales of which Exhibit 84 (Record, page 199) is a copy, and demands payment of the balance, stated at $10,992.53. But see Exhibit 100 (Record, pages 252–3), which Loring says was sent to complainant, and which is a statement of the account up to the same date, and includes the credit for amount received from sale of collateral stock $6,177.07, and concludes with a balance of $9,529.52.

October 20th, Loring writes again (Record, page 367) on another subject. November 7th complainant replies (Record, page 201):

"I arrived home Saturday night and found your letter of the 20th. I received one before in which you repeat a conversation with me while in Detroit not in accordance with the fact. I said I received an envelope containing a notice of sale of stock, remailed at Houghton September 26th, and received by me about the 1st of November."

Palmer testifies (Record, page 365) that this last word "November" was an error for October.

This closes the correspondence, except one letter written by Loring to Noble, April 22, 1872 (Record, page 330), which bears on the question when Loring abandoned and annulled the auction sale. This letter affirms the sale and refers Noble to complainant in reference to it.

The history of this auction sale is derived exclusively from Loring. His statement of it on cross-examination is on pages 227 to 232 and 254 to 256 of the Record. The purport of it is as follows: Loring engaged the auctioneer to procure bidders to buy in the stocks for him. No certificates were present at the sale; no money passed, except the expenses of conducting the sale. The auctioneer made a report of the sale to Loring with the name of the bidders. Certificates were then formally issued in the names of such bidders, and by them at once endorsed over to Loring, without ever leaving his hands; and so remained until 1872, when Loring sold them. Loring being president and his faithful bookkeeper secretary of the several companies, facilitated this manipulation of the stocks.

These are some of the "legal technicalities of the law" which this sale lacked of a valid foreclosure by a trustee of the interests of the beneficiaries of the trust. The account of it is much more graphic as Loring states it little by little in giving his evidence. He further says he can't say the precise time his counsel advised him this sale was invalid; can't recollect exactly whether it was prior to his interview with complainant in October; he did not tell complainant

then that the sale was invalid, but to the best of his recollection did tell him the stock was placed where he could have it. As matter of fact the certificates were at that very time in his safe.

The proceeds of this bogus sale were credited to complainant on Loring's books at $6,177.07, and this is the last entry ever made in the account, except a credit on December 31, 1874, to capital stock (which Burr the bookkeeper says, Record, page 207, means the same as "Profit and Loss") of the balance of $10,992.53; see exhibit 91 (Record, page 206), and exhibit 90 (Record, pages 204–6), which are complete transcripts of complainant's accounts in Loring's books.

The grasping character of this defendant is fitly described by complainant in his letter to Frue of April 5th, 1869, where he says: "In difficulty Loring is hell upon his associates; he does not seem to recognize that they have any rights whatever." It is exhibited in his selling Frue's Calumet stock loaned to him to aid him in borrowing money to tide him over his financial distress; in confiscating stocks, not only of Palmer, but of Frue and Noble and others, which he held as trustee for them individually, to make good to himself an imaginary balance due him from complainant on his false land account; and finally in his effort now to absorb complainant's interest in the lands in Section 23.

It will be observed that in this pretended auction sale Ossipee brought 50 cents; Kearsarge 70 cents; Torch Lake 5 cents; Adams 25 cents; South Pewabic 7 cents; and Sections 35 and 36 one cent per share.

In 1872 Loring, without notice to complainant, treating as his own the stocks which he had thus confiscated, sold all the Ossipee to Clarke at $5.00, and the Adams to Stanton for $1.66⅔, per share, complainant's interest in Sections 35 and 36 for an aggregate of $1,750. Torch Lake was absorbed

in a consolidation. The Kearsarge stock Loring still retains. The proceeds of complainant's stocks in above sales are now credited to his account, and aggregate over $16,000.

The first knowledge complainant ever had of these sales and transformations, except mere rumor, was derived from Loring's testimony in this case. Loring swears (Record, page 232) he never rendered complainant any account after transmitting him the auctioneer's report of said bogus sale.

In view of the tortuous course pursued by this defendant what wonder that his counsel in questioning him about the final sale to Stanton of the Adams stock should unwittingly have asked, "Was that a genuine sale?" etc. (Record, page 183.) The question discloses the doubt which the counsel must naturally have felt as to whether the end of the shameful story had yet been reached.

In answer to his counsel's inquiry (Record, pages 297–8) why, after the sale in 1872, the account was not reopened and a statement made, he says he treated it as a matter that was closed in point of fact, being sold to the best advantage and not to be reopened; nor was Palmer notified in reality; and he gives the further reason, that he heard complainant was insolvent; that he commenced suit against him in 1872 and discontinued it. On cross-examination (Record, pages 299–300) he says his suit was withdrawn in 1874 and that it was instituted to recover the balance shown on the account on his books. The bill of particulars of that suit (Record, pages 393–4), the last item of which is the proceeds of the bogus auction sale $6,177.07, leaving a balance as of September 30, 1870, of $9,529.52 (the same as Exhibit 100, Record, pages 252–3), corroborates this statement.

In July, 1875, Loring made the trust deed to Welch, Exhibit D attached to the bill. (Record, pages 32–3.)

We are aware that this statement of facts has extended somewhat beyond what is essential to the determination of the questions involved in this appeal, but it is generally no

harm for a court to be provided with the means of viewing the acts of parties in the light of as full knowledge of their character and motives as is developed by the evidence in the case.

## I.

## Express Trust.

The main question is, whether the facts proved are sufficient to establish a trust under the Michigan statutes.

We maintain we have made out a clear case of an express trust.

Let us recapitulate briefly the salient facts, omitting all disputed matters.

1. Palmer, Frue and Loring, had for a considerable time been in the practice of purchasing mining properties, sharing jointly and equally therein, the title standing in the name of Loring as trustee.

2. The bargain and terms of purchase were completely made by Palmer, with Frue's assent, before Loring had any knowledge of it. It was regarded by all as a valuable purchase. The memorandum contract was drawn up embracing all the terms of purchase. This contract ran to Palmer and Frue, or Palmer and associates.

3. Palmer wrote Loring, enclosing this contract, advising him of the purchase; speaking of it as his own purchase which Loring was to complete for him, but indicating clearly enough that the purpose was to use it in connection with Ossipee, and that it was contemplated Loring should be jointly interested, if he chose. Mason also treated it as Palmer's purchase and Palmer's contract. Palmer sent three letters and two telegrams before hearing from Loring.

4. On receipt of Palmer's letters Loring writes, saying he is pleased with the purchase and joins in it, and shortly afterward telegraphs that the contract is closed.

5. Loring having received these letters and the memorandum contract running to Palmer and Frue or Palmer and associates, is presented by Perkins (to whom Mason had sent it) with a contract such in terms as Palmer's letters and memorandum contract advised him of, with the name of the vendee blank. He directs this blank to be filled with his name as trustee, and executes it in that name.

6. At an interview in July at Houghton, the three discuss the purchase, and the question of putting it into Ossipee, and on Loring's suggestion that there is more money in it for them to keep it, and assertion that they owned it jointly and would keep it, the idea of using it with Ossipee was abandoned.

7. In his letters of February 3rd and 22nd, 1869, Loring clearly enough indicates that Palmer is one of the beneficiaries for whom he holds in trust this contract from Mason.

8. The declaration of trust enclosed to Palmer by Loring in his letter of March 16, 1869, and which was endorsed on the Mason contract, may be taken as an admission, at least, that Palmer was entitled to some interest.

9. The answer admits the original bargain of purchase was made by Palmer, with the expectation that Loring would become interested therein together with Palmer and Frue; that Palmer wrote him in relation to said purchase and requested him to enter into a written agreement with Mason for the completion of said purchase, and that in consequence of such correspondence and growing out of it, Loring entered into the contract with Mason, and executed that contract as trustee.

10. In his deposition, signed and sworn to, Loring says: "At the time of said contract I expected William B. Frue and Charles H. Palmer to be interested with me, Frue to have one-quarter and Palmer one-quarter, each paying his proportional part of the purchase."

## Statute of Frauds.

*Railroad Co., v. Durant*, 5 Otto, 576, holds: "when a conveyance of real estate is made to the grantee *as trustee*, without setting forth for whom or for what purpose he is trustee, parol evidence is admissible to establish the fact." This case came up from Nebraska, and the Nebraska statute of frauds at that time was identical with the statute of Michigan invoked by the defendant here.

Applying that ruling to this case, and the undisputed oral admissions and declarations made by Loring to Frue and Palmer at the interview in July, 1868, taken with the contract from Mason, running to Loring as trustee, make out a perfect case for complainant.

Perry on Trusts, §82 says: "If there is any competent written evidence that the person holding the legal title is only a trustee, that will open the door for admission of parol evidence to explain the position of the parties." Citing *Cripps v. Jee*, 4 Bro. Ch., 472; *Hollingshead v. Allen*, 17 Pa. St., 275; *Prevost v. Gratz*, 1 Pet. C. C., 364; *Morton v. Tewart*, 2 Yo. and Col., Ch., 67; *Hutchins v. Lee*, 1 Atk., 447; *Corse v. Leggett*, 25 Barb., 389. See also Browne on Statute of Frauds, § 111.

The case of *Kingsbury v. Burnside*, 58 Ill., 300, and *Urann v. Coates*, 109 Mass., 581, are strong cases to the same effect. Indeed in most of the cases it has been found necessary more or less to supplement the written evidence with parol testimony to connect the written declaration with the subject matter: and it has very generally been shown that the written declaration was made in pursuance of an original oral agreement to take and hold as trustee. In many of the cases the writings held to be sufficient to establish a trust, standing alone are almost meaningless, but when construed in the light of the surrounding circumstances proved by parol testimony, become clear enough and unmistakable in their meaning.

The courts have uniformly apposed such a stringent construction of the Statute of Frauds as would encourage its use as a cloak or protection of frauds.

Prior to the passage of the statute of frauds, express trusts in lands could be established by parol. The 7th Section of the English statute provides that trusts, etc., "shall be *manifested* and *proved* by some writing signed by the party." Some of the American states in adopting this statute have changed its wording so as to require the trust to be "*created* or *declared* by instrument in writing signed by the party."

A summary of the legislation of the different states is given in a note to the chapter on express trusts in the Fourth Edition of Browne on the Statute of Frauds; and also in a note to Section 78 of the Third Edition of Perry on Trusts.

At an early day it was questioned whether it was not the intention of the English statute that the creation or declaration itself should be in writing; but whatever may have been the actual intention of the legislature the construction put upon the statute is now firmly established. Perry on Trusts, §79; Browne on the Statute of Frauds, §97. And it is now uniformly held that the declaration may be executed subsequently to the creation of the trust, or even in anticipation of it, or subsequently to the death of the grantor or the bankruptcy of the grantee.

No particular formality is required or necessary in the creation of a trust. It may be by an express declaration, or by any informal memorandum: *Bellamy v. Burrow*, Cas. tem. Talb., 97; *Fisher v. Fields*, 10 Johns., 495; *Corse v. Leggett*, 25 Barb., 389; *Urann v. Coates*, 109 Mass., 581; or by letters: *Forster v. Hale*, 3 Ves. Jr., 696, S. C., 5 Ves., 308; *Montague v. Hayes*, 10 Gray, 609; *Kingsbury v. Burnside*, 58 Ill., 300; by a pamphlet: *Barrell v. Joy*, 16 Mass., 221; by a receipt: *Faxon v. Folvey*, 110 Mass., 392; by a deposition or affidavit: *Pinney v. Fellows*, 15 Vt., 525; by a recital in a bond: *Gomez v. Tradesmen's Bank*, 4 Sandf., 102; *Bragg v. Paulk*, 42 Me., 502; by a

recital in a deed: *Wright v. Douglass*, 7 N. Y., 564; though the deed run to third parties: *Barrell v. Joy*, 16 Mass., 221; or by an answer in chancery: *Patton v. Chamberlain*, 44 Mich., 5, and cases cited; *Hutchinson v. Tindall*, 2 Green Ch., 357; *Maccubbin v. Cromwell*, 7 Gill and John., 157; *Barron v. Barron*, 24 Vt., 375; in short by any writing in which the fiduciary relation between the parties and its terms can be clearly read: Perry on Trusts § 82, and cases cited. Nor is it necessary that such letters, memoranda or recital should be addressed to the *cestui que trust*, or should have been intended when made to be evidence of the trust: Perry on trusts, § 82; Browne on Stat. of Fr., §§ 88, 109.

The question has arisen whether the change in the wording of the statute, requiring the trust to be *created* or *declared* by an instrument in writing works any change in the construction to be given to it, and the rulings seem to have been almost uniform that it does not.

Mr. Justice Bennett, in *Pinnock v. Clough*, 16 Vt., 508, says that the Vermont statute, which reads "created or declared," etc., is the same in effect as the English statute.

Mr. Justice Story, in *Jenkins v. Eldredge*, 3 Story, 294, says that in his opinion there is no substantial difference between the Massachusetts statute (which is like that of Vermont) and the English statute.

Mr. Justice Colt, in *Urann v. Coates*, 109 Mass., 581, 585, expressly holds that the words "created or declared" in the Massachusetts statute are equivalent to "manifested or proved" in the English statute. He says: "Trusts may be created in the first instance in writing; they more commonly originate in the oral agreements and transactions of the parties, and are subsequently declared in writing. Our statute embraces both descriptions:" and see, also, *Barrell v. Joy*, 16 Mass., 221; and *Faxon v. Folvey*, 110 Mass., 392.

In *Richardson v. Woodbury*, 43 Me., 206, 212, Mr. Justice Davis refers to the Maine statute, which required all trusts concerning lands to be "manifested *and created*" by

writing, etc., and expresses the opinion that it was an important change from the statute of Massachusetts. In *McClellan v. McClellan*, 65 Me., 500, 504, Mr. Justice Virgin calls attention to the changes in the Maine statute and to the above decision in 43 Me., 206, and to the fact that after that decision the statute was changed in 1857 from "manifested and created" to "created or declared," and holds that under the later statute express trusts may be "created" in the first instance, or subsequently "declared," by any proper writing signed as required, citing with approval several Maine cases, and also *Montague v. Hayes*, 10 Gray, 609; *Urann v. Coates*, 109 Mass., 581; *Faxon v. Folvey*, 110 Mass., 392; *Kingsbury v. Burnside*, 58 Ill., 300; and he sustains the trust set up in the case, which rested upon letters and memoranda subsequent to the deed, which was absolute in form.

But the statute of New York prior to 1860, like the present statute of Michigan, and also of Wisconsin, required trusts to be created or declared by a deed or conveyance in writing; and it remains to be considered whether the words "deed or conveyance" are restrictive.

In *Corse v. Leggett*, 25 Barb., 389, 394, upon the definition of the word "conveyance" in the statute as embracing any instrument "by which the title to such estate may be affected in law or equity," it is held that a trust is well declared by a mere written memorandum in a book. In *Wright v. Douglass.*, 7 N. Y., 564, it was held that a recital in a deed was sufficient, and that it need not be done in the form of a grant. It is true there is a *dictum* in *Cook v. Barr*, 44 N. Y., 156, 159, to the effect that this statute required trusts to be created by deed or conveyance and the only proof of them was such deed or conveyance; but that case was decided in 1870, after the amendment of the statute in 1860, which amendment that court expressly determines rendered it substantially the same as the English statute, and that under it trusts could be then proved by any writing subscribed by the party. This *dictum* of course is of no weight as authority.

The Michigan statute (§6,208, Howell's Annotated Statutes) defines the word "conveyance" as used in the Statute of Frauds, as embracing "every instrument in writing except a last will and testament, whatever may be the form of such instrument, and by whatever name it may be known in law, by which any estate or interest in lands is created, aliened, assigned or surrendered."

It is expressly decided in *Patton v. Chamberlain*, 44 Mich., 5, that an avowal of the trust in an answer in chancery is a sufficient declaration of trust in writing to answer the requirement of the Statute of Frauds. This should be conclusive. For if an admission in an answer comes within the statutory requirement of a deed or conveyance, surely any other written admission ought to be sufficient. And this being a Michigan decision construing the Michigan statute ought to be of great weight with this court.

The Wisconsin statute is copied from that of Michigan; and in *White v. Fitzgerald*, 19 Wis., 480, it is held that a written memorandum signed by the party, which as to the land in question stated merely that it was *owned jointly* by White and Fitzgerald, was a sufficient conveyance in writing, and a sufficient declaration of trust under the statute; and that it meant that each owned one-half the land.

From the foregoing authorities it seems well established that the words "created or declared" mean nothing different from "manifested or proved" and that the words "by deed or conveyance" do not substantially change the construction given to the statute.

Perry on Trusts, §81, says in summing up the authorities on this point: "Upon sound reason then and upon decided cases, it would seem that the peculiar form of words in some of the statutes of the American States, has not altered the general rule as established under the English statute; and that the same evidence would be generally received in the United States to establish a trust as in England." See also to the same effect Browne on the Statute of Frauds, §104.

The writings in the case at bar are certainly as clear and definite as those which were held to be sufficient in the leading English case of *Forster v. Hale*, or in *Urann v. Coates*, 109 Mass., or in *Kingsbury v. Burnside*, 58 Ill., or in *White v. Fitzgerald*, 19 Wis., or in many of the other cases above cited.

## Statute of Uses and Trusts.

But conceding these writings to have been sufficient under the Statute of Frauds to establish an express trust, is the matter affected by the Michigan Statute of Uses and Trusts?

This statute was adopted from New York and most of its provisions are identical with the New York statute of 1830.

The object and effect of the statute is fully discussed in Willard's Eq., p. 414 *et. seq.*, and Washburne on Real Property, vol. 2, p. 212.

It was enacted in Michigan in the Revision of 1846, and stands as Ch. 63, Rev. Stat. 1846. But a very important modification is made in section 11 of the Act. The New York statute specifies but four purposes for which an express trust may be created.

The Michigan statute adds a fifth:

"5th. For the beneficial interest of any person or persons, when such trust is fully expressed and clearly defined upon the face of the instrument creating it, subject to the limitations as to time prescribed in this title."

Wisconsin, that was formerly a part of Michigan, in 1849 enacted the Michigan statute *verbatim*. Its Statute of Frauds, its definition of "conveyance," and its Statute of Uses and Trusts, are precisely the same as those of Michigan.

We find the above subdivision 5 in the statute of no other State. Its effect seems never to have been directly passed upon by the Michigan Supreme Court.

In Wisconsin, however, it has been fully discussed in several cases. In *Marvin v. Titsworth*, 10 Wis., 320, it was

overlooked, and the New York decisions followed. But in *White v. Fitzgerald*, 19 Wis., 480, *Goodrich v. Milwaukee*, 24 Wis., 422, and *Riehl v. Bingenheimer*, 28 Wis., 84, the cases turned upon the effect to be given to this section.

In *White v. Fitzgerald* the court calls attention to the distinction between the Wisconsin statute and that of New York, and concludes:

"We see no reason why any written instrument that was sufficient as a declaration of trust before chapter 84 [the Statute of Uses and Trusts] was incorporated into our laws, and which is not affected by the limitations as to time, is not sufficient now; or at least so far valid that the *cestui que trust* will be protected. In cases not otherwise provided for he has a right to the aid of a Court of Equity as formerly * *. There can be no doubt that the instrument in question would be regarded as a good and valid declaration of trust."

In *Goodrich v. Milwaukee* the case of *Marvin v. Titsworth*, 10 Wis., 320, is expressly overruled, and *White v. Fitzgerald* approved and followed. The Court holds as to said fifth subdivision as follows:

"The addition of that subdivision to the four which precede it and which are found in the statute of New York, establishes, as it was undoubtedly intended to do, a policy in this State upon the subject of active trusts entirely different from that which prevails in the State of New York. It shows very clearly that no active trusts were intended to be affected or abolished by any provision of the statute, though the language of some of its sections, literally construed, may be broad enough to include them. * * * * Upon full consideration we are satisfied that such is the true construction of the statute. It is certainly the only one by which its various provisions can be harmonized and effect be given to each."

These cases are affirmed in the recent case of Bostwick v. Dickson decided in February 1886 and reported in 26 N. W. Rep. 549.

## II.

## Abandonment; Abrogation and Acquiescence.

Has the trust thus established been since abandoned or abrogated ?

Upon this question the burden of proof is upon the trustee, as held in *Seymour v. Freer*, 8 Wall., 202, 216. See also *Prevost v. Gratz*, 6 Wheat., 481, 497.

A trust may be terminated either by an abandoment of his claim by the *cestui que trust*, or by a denial on the part of the trustee that under the circumstances the trust any longer exists, and acquiescence therein by the *cestui que trust*. See *Seymour v. Freer*, *Ibid.*

Loring seeks to avail himself of both these defences. They are distinct in their nature and we shall consider them separately.

*First as to the abandonment.* The only evidence adduced by Loring on this head is his own testimony, and relates to the interview in Boston in December, 1868. He is examined on written interrogatories, without cross-examination. He is asked with reference to an interview at Houghton in October, 1868, and the advancement of the $5,000. After answering the interrogatory as to the interview in October, he states that he saw Palmer in Boston in his office in December following, and agreed to take the payment of the $5,000, which Palmer said had been made by Frue on account of the Adams Mining Co., as payment on account of one-quarter of Section 23, and volunteers to add: "and that I should hold three-fourths for myself, unless a further payment was made by him or Frue." (Record, page 112, fifth interrogatory and answer.) This answer is not responsive to the question and ought not to be considered. There is no evidence whatever of an abandonment at any other time.

Palmer in his rebutting testimony (Record, page 117), denies absolutely that any agreement or conversation was

had at that time or any other time or place, that Loring should hold three-fourths of Section 23 unless more money was paid.

The evidence is abundant from Loring's own letters written subsequently, that he himself did not consider or understand that Palmer had abandoned his interest in December, 1868. For, in January and February afterwards, we find Loring intervening between Palmer and Mason for an extension of time for making the last payment, and communicating to Palmer Mason's refusal; more than that, he by letter expressly recognizes Palmer's interest in the matter. And later still, he intervenes between Palmer and Mason for an exchange of Palmer's Ossipee stock for one-third interest in Section 23, and as late as February 22d, by letter again expressly recognizes Palmer's interest in the premises.

It is too clear for argument that there was no abandonment in December.

It is evident that all parties interested in the purchase esteemed it from the first a very profitable investment. Mr. Palmer's anxiety to guard against the possibility of failure in its completion is shown by his numerous letters and telegrams to Loring and Mason, at the time of the original agreement.

Frue paid $5,000 for Loring before the contract was signed. Loring entered into the contract immediately on being advised of its terms. The only reason for refusing to put it into the Ossipee, was, that there was more money in it to hold it separately. Its very great value was fully appreciated. The only point of difference was as to the way in which the largest profit could be realized.

Palmer had consented to sell smelting work stock at what he considered a very great sacrifice, and says that he consented for the purpose of raising funds for Mason, and that he stated to the purchaser of that stock his reasons for selling the same. He arranged to have a portion of the re-

ceipts from this sale, nearly sufficient to meet the payment falling due to Mason, deposited on Loring's account in New York, so as to be available the very day that the Mason payment fell due.

The entire testimony shows that he regarded the purchase of 23 so valuable that he was ready to submit to any sacrifice to prevent a forfeiture of the Mason contract.

Is it reasonable to suppose that, so regarding it, he should within six months entirely relinquish all claim to the property?

*Second: Has there been denial on the part of Mr. Loring, and acquiescence by complainant?*

Acquiescence may be express or tacit. If express it is tantamount to abandonment. But it is plain as we have already shown that there is no evidence of abandonment or express acquiescence.

The point then is narrowed down to the consideration of the question of tacit acquiescence.

The last payment fell due to Mason, February 18th, 1869. February 3rd, Loring wrote complainant notifying him of Mason's refusal to extend time; stating he had a large sum of money to raise, and adding:

"On top of these comes this payment to Mason, which I was really in hopes you would find some one to do it on terms that you could retain for yourself a large interest in 23. The ways and means of raising this money is as yet altogether uncertain, but hope I shall be able to do it without selling any your stocks at present."

Is this not a recognition, rather than a denial of complainant's rights? and is it not a fair construction of it, in view of their previous relations, that Loring is willing, if he can, to raise the money on Palmer's behalf without resorting to his stocks for the purpose, and let the matter rest on credit; and that if it becomes necessary he will sell his stocks to make the payment? We submit, that is the natural interpretation of this letter.

Thereupon Palmer set at work negotiations at once to turn out to Mason 1,000 shares of his Ossipee stock at net cost, on condition that Mason should retain a third interest in Section 23. These negotiations were made through Loring, and they failed. Loring paid Mason, February 18th and 19th, the balance due him, and received a deed of the lands to himself as trustee.

Loring's letter to complainant of February 22nd was the first notice complainant had that the negotiations with Mason had failed, as well as the first knowledge he had that Loring had been able to raise the money, as he had so plainly proposed in his letter of February 3rd to endeavor to do without selling any of his stocks, to make the last payment to Mason. This letter notifies complainant that Mason has been paid and Loring has the deed; and continues:

"I therefore deem it my duty and an act of courtesy towards you to notify you that whatever additional proportion you wish to secure for yourself in Section 23, it will be necessary for you to remit the amount of the cost of such additional portion as you desire prior to the 20th of March, otherwise I shall consider as mine, and retain the three-fourths interest in Section 23, which I have paid for."

This is a pointed recognition of Palmer's continuing interest, and that to some extent Loring had made advances on Palmer's behalf towards the purchase price of the premises, on a credit to extend at least until the 20th of March. To be sure this concession or admission is coupled with the brazen assertion on the part of this trustee, that unless his *cestui que trust* shall, within a brief period, pay moneys alleged to be due on account of advances made in relation to the trust property, he, the trustee, will appropriate that entire property to his own use.

This method of foreclosing a trust seems to us as much to "lack some legal technicalities of the law," as did Loring's bogus auction sale. The threat made by this letter was an idle one,—

Swinburne v. Swinburne, 28 N. Y., 568, 572,

And one which Palmer was under no obligation to notice.

Whether or not he did notice it, is one of the disputed questions of fact in the case. We do not deem it at all a vital question as against Palmer.

Complainant swears he did answer that letter under date of February 26th, and that he made at the time a memorandum of the subtance of that answer on the envelope covering Loring's letter. This memorandum is produced and reads: "I have been willing to unite on any plan to mutually aid us, but failing in this cannot consent to lessen my interest in section 23." Loring denies having ever received this letter. The probabilities strongly favor the complainant.

March 6th Palmer again writes, and after stating that he has been absent from home, and reciting various attempts to raise funds, says: "I shall do the best I can; you had better sell the 100 shares of Hecla. I see it is selling for $80."

Loring sold that stock for $8,000 and received the money March 20th, the very day of the limit fixed in his letter of February 22nd, for Palmer to make further payment.

March 8th complainant again wrote Loring; and he testifies he enclosed in that letter a postscript referred to in the earlier part of our brief. The sending of this postscript is another disputed question of fact. The court below resolved this dispute in defendant's favor; but it must be borne in mind that when the cause was originally heard and when this decision was made, the court below had little knowledge of the devious ways and scheming methods of this defendant. These were all brought to light on his cross-examination, which was not had till after the original decree was granted. Prior to the original hearing in that court, Loring had been heard only in answer to a few direct written interrogatories prepared by his own counsel, and those answers taken under a commission at Boston, with no one present on behalf of the complainant. (Record, pages 112–115.) Whether the same conclusion would have been

reached by that court in the light of the fuller knowledge of defendant's character developed by his subsequent cross-examination, no one can tell.

While we do not deem the point a vital one against us, it is vital against the defendant, and we will present the argument of it from the complainant's standpoint.

This postscript complainant not only kept a copy of, but had that copy attested by his daughter and the original posted by her. The reason for this extraordinary precaution is manifest. Loring had announced his deliberate intention to appropriate the entire property. And while their relations had theretofore been of the most intimate and confidential nature, Frue had come to entertain very serious doubts ot Loring's integrity, and had communicated those doubts to Palmer. (Record, page 49.) Not content therefore with the protest in his letter of February 26th, of which he had kept no full copy, Palmer, ten days after, sends this communication, the contents and forwarding of which he sought to put beyond question, in the manner above indicated.

It will be borne in mind that Loring's testimony that he did not receive this postscript must depend solely upon his recollection; that he was upwards of seventy-four years of age and testifying in relation to transactions ten years after their occurrence; and that he admits many errors in his recollection in his testimony as to the accounts. The correspondence between the parties was very voluminous, and that he should have been mistaken as to this letter would not be surprising.

On the other hand there is no possibility of mistake on Palmer's part. The memorandum and postscript which he presents are either what they purport to be or are manufactured from whole cloth. The papers are genuine, or Mr. Palmer has committed wilful perjury; and in that crime, so far as the postscript is concerned, his daughter has joined him.

We disregard as entirely immaterial any discrepancies there may be between Palmer's testimony and that of his daughter, as to the details of the writing and posting of this postscript, remarking only that if this were a conspiracy between them, there would have been no discrepancy on these points. The important question is whether the writing is genuine, the details are unimportant.

Nor do we deem it at all conclusive, that Loring did not in his subsequent letters notice this communication. There was nothing in it which particularly called for an answer if he were acting honestly, and if he had then determined to confiscate this interest, the less he said about this postscript the better he could deny having received it.

Complainant having written Loring March 8th, asking for a statement that Frue owned an undivided quarter of the lands in 23, as he had paid that amount, Loring replies March 16th. This letter is more hopeful than those immemediately preceding it, and says that the sale of the Hecla stock will relieve him in part, and on the margin he adds: "Enclosed I forward the bond given by Mason with an endorsement that I trust will meet your wishes."

This endorsement is peculiar. It is divisible into two parts.

*First:* "Whereas, Thomas F. Mason, has deeded to E. T. Loring in trust, the lands described in the within document and received therefor in payment the sum mentioned therein with the interest; Therefore be it known, for value received, I hereby acknowledge that C. H. Palmer or William B. Frue, one or either of them jointly or separately, are the owners of the undivided one-fourth of said lands."

*Second:* "And I hereby obligate myself, heirs and executors to account to said Palmer or his assignee for one-fourth part received for the lands in question whenever a sale shall be made of the same."

If this declaration was intended to apply to only one-quarter, it would be complete without the second part. It

does not appear that Loring had ever been notified by Frue that he had paid the $5,000; therefore as to this quarter he declares the trust in favor of Palmer and Frue "jointly or separately." But he does not stop here. He had asserted an intent, unless something were done by the 20th, to appropriate the whole of the remaining three-fourths. Palmer had vigorously protested and insisted on his claim to one-third. To meet that protest he adds the second clause, which in the light of the circumstances must be construed as a proposition of compromise. In this he makes no mention of Frue at all, but the declaration here is in Palmer's favor solely.

It is inconceivable that after in the first part of this instrument using such caution to avoid being drawn into any controversy between Frue and Palmer as to the $5,000 payment, Loring should immediately afterwards, in reference to the identical interest, promise to account to Palmer solely.

This document admits of but one reasonable construction. It declares *first* a trust *in presenti* in favor of the person who made the payment of the $5,000,—Palmer or Frue as it may prove to be—for one-quarter of the land; and *second*, as to Palmer, to whom no other moneys had been credited specifically for this purchase, the agreement is to account to him solely for one-quarter of the profits when the property should be sold.

If Loring had then intended to appropriate the whole three-fourths to himself, the statement on the margin of his letter, that he trusted this document would meet Palmer's wishes, was simply ironical.

How Palmer construed this declaration is made clear by his letters to Frue, of April 5th and 6th, to which we have before referred.

These letters show, were any further proof needed, that up to this time there had been on Palmer's part no acquiescence in Loring's threatened appropriation of three-fourths of this purchase.

While this declaration endorsed on the Mason contract is an acknowledgment by Loring, from which he cannot escape, admitting Palmer's right in the property to the extent of one-quarter, the receipt of it by Palmer to forward to Frue, without positive affirmative action, and in the absence of anything on which to found an estoppel, does not preclude him from asserting his rights under the trust as originally created.

To abrogate a trust by denial and tacit acquiescence, there must be a definite act of denial, of unmistakable import, and not a mere ambiguous and uncertain declaration of future intent. The act must be of a nature somewhat akin to what is requisite in adverse possession, or to what would amount to an ouster as between tenants in common: see *Campau v. Campau*, 45 Mich., 367.

"To enable a trustee, without giving up the possession, to turn it into an adverse holding against the *cestui que trust*, the evidence must be clear and unmistakable; and such adverse claim must be brought home to the *cestui que trust* beyond question or doubt. The attitude of the trustee must be hostile and continuously so; and there must be no mistake or misapprehension as to the character of his holding by either party." Perry on Trusts, §864, and cases cited in note 2.

Here the only act of denial shown is the declaration in the letter of February 22nd, which threatened that unless Palmer paid prior to March 20th, Loring would consider as his and retain the whole three-fourths interest which he had paid for. This as we have shown was a giving of credit until the time specified. In the interval, on March 6th, instructions were given to sell the Hecla stock, which was sold and the money received by Loring on March 20th; and on March 16th comes the aforesaid double-headed declaration endorsed on the Mason contract. These things at least constituted a change in the situation of affairs, and it is

noticeable that after this change there was no further act of denial. There was no notice of default or declaration of forfeiture. Indeed according to Loring the subject was never again mentioned between him and Palmer, except by the letters herein before mentioned.

Now upon the question whether the Hecla stock was sold, as Palmer claims and swears, for the purpose of making good his third of the land in Section 23; it does not seem to us the fact that the proceeds of that stock were credited in Palmer's general account is conclusive for Loring never made any charge in any account of the Mason purchase, nor any credit anywhere even of the $5,000, the payment of which is conceded. So that there was no other place than in Palmer's general account to place the proceeds of the Hecla stock; and Loring never pretended to keep Palmer's separate transactions in separate accounts.

In the absence of any change in title or surroundings or of any circumstance calling upon the *cestui que trust* to assert his rights or stand estopped, mere tacit acquiescence will not bar a direct express trust where the interest is one in real property, unless continued at least so long as to constitute a bar at law under the statute of limitations.

Perry on Trusts, §864.
Angell on Limitations, §468, note 2.
Story's Eq. Jur., §1,521 a.

In *Baker v. Whiting*, 3 Sumner, 475, 486, Mr. Justice Story says: "I apprehend that in the case of a trust of lands, nothing short of the statute period which would bar a legal estate or right of entry would be permitted to operate in equity as a bar to an equitable estate."

See also:

Williams v. First Pres. Society, 1 Ohio, St., 478, 506.
Kane v. Bloodgood, 7 John. Ch., 90.
Robertson v. Wood, 15 Tex., 1.
Hunter v. Hubbard, 26 Tex., 537, 547.
Hubbell v. Medbury, 53 N. Y., 98, 100.
Merriam v. Hassam, 14 Allen, 516, 522.
Comp v. Jackson Iron Co., 49 Mich., 39.

III.

## Trustee Ex Maleficio.

There is another distinct ground upon which, as it seems to us, the complainant's rights may be safely and lawfully rested, involving considerations of agency and fraud.

It is perfectly apparent that Loring obtained the Mason contract as he did, only upon the supposition and definite understanding on the part of both Mason and Palmer, that he was taking and executing the same on behalf of Palmer and Frue as well as himself, and as representing their interests; and this he well knew at the time, from both Palmer's and Mason's letters. It is clear that Mason would not have dealt with him except on the basis of making good his moral obligations to Palmer growing out of their verbal bargain at Houghton. Loring understood this perfectly. He understood too that Palmer was implicitly relying upon him to execute the contract on behalf of Palmer, Frue and himself as joint purchasers; and that in the event he was unwilling to do this and to join in the purchase, the bargain was to be saved and the contract executed in another way.

Under these circumstances then, if he took the contract in the form he did, with the design to hold it for his sole benefit, his action was so tainted with fraud that equity will treat him as a trustee *ex maleficio.*

On this point the opinion of Mr. Justice Story in the case of *Jenkins v. Eldredge*, 3 Story, 289, is very instructive. He treats the case before him as one not to be considered as standing purely or singly upon either of the four separate grounds urged by the plaintiff as taking the case out of the statute of frauds, but as embracing ingredients of all of them. As to agency he says:

"It appears to me that here a confidential relation of principal and agent did exist; and that being once shown, it disables the party from insisting upon the objection that the trust is void as being by parol. * * * It is

deemed a fraud for an agent to avail himself of his confidential relation to drive a bargain, or create an interest adverse to that of his principal in the transaction, and that fraud creates a trust, even when the agency itself may be, nay must be proved only by parol."

He does not impute to Eldredge any such original premeditated intention of fraud as argued by the plaintiff, but says:

"In my judgment the result is the same although the original design of Eldredge was perfectly fair and honorable, if he has since deviated from his duty and attempted to absolve himself from the obligations of the trust, such as he knew the plaintiff believed it to be and constantly acted upon, because in point of law it would be a breach of trust, involving a constructive fraud, such as a court of equity ought to relieve."

Mr. Justice Cooley, in *Hooker v. Axford*, 33 Mich., 453, 456, which was the case of a will made under advice of an attorney so as to devise the estate absolutely to himself and another person upon a secret parol trust for the complainant, says:

"If he had given the advice intending to appropriate the property, this would have been a gross fraud and a gross breach of confidence. It would be equally a fraud if, having given the advice honestly, he should afterwards conclude dishonestly to retain the lands."

In *Seichrists' Appeal*, 66 Pa. St., 237, it is held that a party obtaining a title through confidence under such circumstances that he could not retain it without bad faith and abuse of confidence, will be converted into a trustee *ex maleficio.*

*Squires Appeal*, 70 Pa. St., 266, was a case of a purchase in his own name by an agent undertaking to purchase for his principal.

*Jenckes v. Cook*, 9 R. I., 520, was a case of a purchase at a mortgage sale by one who undertook to bid on behalf of the owner; other bidders being thereby deterred from

bidding. *Brown v. Lynch*, 1 Paige, 147, is a similar case; so also is *Ryan v. Dox*, 34 N. Y., 307.

For like cases of sheriffs' sales, see *Denton v. McKenzie*, 1 Dess., 289; *Leith v. Purvis*, 4 Dess., 114; *Cox v. Cox*, 5 Rich. Eq., 365; *Coombs v. Little*, 3 Green Ch., 310; *Brown v. Dysingen*, 1 Rawle, 408; *Arnold v. Cord*, 16 Ind., 177. See also *Wilcox v. Morris*, 1 Murphy, 116.

In *Wolford v. Herrington*, 74 Pa. St., 311, on the eve of a sheriff's sale, on execution against Wolford, of land to which his wife held an unrecorded deed, one knowing of the deed represented to the wife her title was doubtful and agreed if she would allow him to buy at the sale he would execute a writing before the property was struck off, declaring he bought for her; he bid off the property but refused to execute the writing. He was held to be a trustee *ex maleficio*.

*Case v. Caroll*, 35 N. Y., 385, was a purchase at foreclosure sale by an attorney for persons with whom he had counseled as to how to proceed to perfect their title by virtue of the mortgage. He was held to be a trustee at their option, whether there was actual fraud or not.

*Anderson v. Lemon*, 4 Seld., 236, holds a partner who secretly purchased in his own name the reversion of real estate occupied by the partnership under a lease for years, while the other partner, with his concurrence, was negotiating for it for the use of the firm, to be a trustee for the firm, on the ground that he took a fraudulent advantage of his situation.

*Sweet v. Jacocks*, 6 Paige, 364, was the case of a conveyance to a father on behalf of his illegitimate children. The court says: "It is a settled principle of equity that when a person undertakes to act as an agent for another, he cannot be permitted to deal in the matter upon his own account and for his own benefit."

*Laing v. McKee*, 13 Mich., 124, holds that where a party who had bid off land at a tax sale had promised the owner of the land to accept the amount bid, with interest, and to assign the certificate, and thereby misled the latter into allowing the time for redemption to expire, he holds the title thus acquired as trustee for the owner.

*Judson v. Mosely*, 30 Iowa, 423, is to the same effect.

The Michigan Statute of Frauds does not stand in the way of this doctrine, for it is expressly excepted from that Statute as follows:

§6180. The preceding section shall not be construed to affect in any manner the power of a testator in the disposition of his real estate by a last will and testament; nor to prevent any trust from arising, or being extinguished, by implication or operation of law.

And it is likewise excepted from the Statute abolishing uses and trusts, as follows:

§5568. The preceding sections of this chapter shall not extend to trusts arising or resulting by implication of law, nor be construed to prevent or affect the creation of such express trusts as are hereinafter authorized and defined.

*Emerson v. Atwater*, 7 Mich., 12; *Laing v. McKee*, 13 Mich., 124; *Wilson v. Eggleston*, 27 Mich., 257; and especially *Huxley v. Rice*, 40 Mich., 73, are instructive cases on this point.

See also *Fisher v. Fobes*, 22 Mich., 454, and *Linsley v. Sinclair*, 24 Mich., 380.

Cases in this court bearing on the point are: *Rothwell v. Dewees*, 2 Black, 613; *Massie v. Watts*, 6 Cranch, 148; *Ringo v. Binns*, 10 Pet., 269, and *Baker v. Humphrey*, 101 U. S., 494.

Indeed there are many cases in the books where transactions, resting upon relations of confidence, have been rescued by courts of equity from the hands of dishonest

repudiators and honestly administered as constructive trusts. The doctrine is a familiar one. The only question is, do the facts in this case bring it within the principle; and on that question there can be very little doubt.

## IV.

## Purchase on Joint Account; Partnership Cases.

There is a class of cases which sustain oral agreements to purchase land on joint account, where the title is conveyed to one alone, as being outside the Statute of Frauds.

They are collected in Reed on Statute of Frauds, §863(2) where it is said: "It is the rule that where under a joint account one takes by the agreement title in his own name, and refuses to give the others the benefit of the contract, parol evidence of the express trust is admissable on the ground of fraud or performance:" citing *Shoemaker v. Smith*, 11 Humph., 81; *Freeman v. Kelley*, 1 Hoffman Ch., 90; *Leakey v. Gunter*, 25 Tex., 403; *Brooks v. Ellis*, 3 G. Green (Ia.), 528; *Kelley v. Johnson*, 34 Mo., 403; *McIntire v. Skinner*, 4 G. Green, 89; *Langhorne v. Payne*, 14 B. Mon., 635; *Smith v. Smith*, 85 Ill., 189; *Butler v. Rutledge*, 2 Coldw., 4; *Powell v. Monson & B. Mfg. Co.*, 3 Mason C. C., 362 (r); *Rhea v. Tucker*, 56 Ala., 450; *Ross v. Hegeman*, 2 Edw. Ch., 373; *Cipperly v. Cipperly*, 4 Thom. & Cook, 342; *Ferguson v. Williamson*, 20 Ark., 272; *McDonald v. McDonald*, 24 Ind., 68; *Bragg v. Paulk*, 42 Me., 502; 2 Story Eq. Jur. §1206; *Page v. Page*, 8 N. H., 187; *Morrell v. Cawood*, 8 Baxt. (Tenn.), 177.

The case of *Honore v. Hutchings*, 8 Bush (Ky.), 687, is a very instructive one on this subject.

These cases are generally put upon the ground of a trust resulting from the payment of the purchase price. And this kind of trust is in general terms abolished by the Michi-

gan Statute; but there are exceptions. The provisions of the Statute are as follows, viz.:

§5569. Sec. 7. When a grant for a valuable consideration shall be made to one person, and the consideration therefor shall be paid by another, no use or trust shall result in favor of the person by whom such payment shall be made: but the title shall vest in the person named as the alienee in such conveyance, subject only to the provisions of the next section.

§5570. Sec. 8. Every such conveyance shall be presumed fraudulent as against the creditors of the person paying the consideration; and when a fraudulent intent is not disproved, a trust shall result in favor of such creditors, to the extent that may be necessary to satisfy their just demands.

§5571. Sec. 9. The preceding seventh section shall not extend to cases where the alienee named in the conveyance shall have taken the same as an absolute conveyance in his own name, without the knowledge or consent of the person paying the consideration, or when such alienee in violation of some trust shall have purchased the lands so conveyed, with moneys belonging to another person.

Michigan decisions have construed this statute and exceptions. See *Fisher v. Fobes*, 22 Mich., 454; *Linsley v. Sinclair*, 24 Mich., 380; *Terry v. Tuttle*, 24 Mich., 206; *Ransom v. Ransom*, 31 Mich., 301; *Hooker v. Axford*, 33 Mich., 453.

So, too, in partnership cases it is uniformly held that partnership interests in lands the title to which stands in the name of one of the partners, can be established by parol; and that such cases are not within the Statute of Frauds. These cases might in some instances be sustained as resulting trusts, but we apprehend the true ground on which to put them is the relation of confidence and agency. And on this ground it seems to us the most of the cases as to joint purchases could be equally well sustained.

Instructive Michigan decisions in partnership cases are *Merritt v. Dickey*, 38 Mich., 41; *Way v. Stebbins*, 47 Mich., 296; *Godfrey v. White*, 43 Mich., 171.

V.

## The extent of Complainant's Interest.

The writings indicate only that the purchase was intended to be a joint purchase on behalf of Palmer, Frue and Loring; but a joint purchase means a purchase in equal interests, if nothing to the contrary appears. Up to the time of the deed from Mason to Loring in trust, February 18th, 1869, there was nothing more definite than the clear inference from the fact that the purchase was a joint one, what the respective interests were. The case, then, upon the writings as they appear up to that time, stands just as it would if the deed instead of running to Loring in trust, had been to Loring in trust for himself, Frue and Palmer. Then it is clear the interests would have been equal.

In *White v. Fitzgerald*, 19 Wis., 480, a memorandum which stated merely that the premises were owned jointly by the two parties was expressly held to mean that each owned one half the land.

"If a tenancy in common be established, but no proof is made in regard to the relative interests of the several cotenants, the presumption of law arises that their shares are equal."

Freeman on Cotenancy and Partition, §105.
Jarrett v. Johnson, 11 Grat., (Va.) 327.
Shiels v. Stark, 14 Ga., 429.
Edwards v. Edwards, 39 Penn. St., 369, 384.
Long v. McDougald's Admr., 23 Ala., 413.
Dashiel v. Collier, 4 J. J. Marsh. (Ky.) 602.

Where lands are conveyed or devised to two or more persons and the instrument is silent as to the interest which

each is to take, the presumption is that their interests are equal.

Campau v. Campau, 44 Mich., 31.
Eberts v. Fisher, 44 Mich., 551.

"And the shares of several joint tenants, as well as of tenants in common, are always presumed to be equal."

1 Washb. on R. P., (4th Ed.) p. 642, [406], §2.

"Where commissioners confirmed claims to the same land to two different persons, they took equal shares in common."

1 Washb. on R. P., (4th Ed.) p. 653, [416,] §3.
Challefoux v. Ducharme, 8 Wis., 287.

"Where two creditors made simultaneous levies on land, as they took at the same time with equal rights, they were held to be tenants in common in equal shares."

1 Washb. *ubi supra.*
Shove v. Dow, 13 Mass., 529.
Sigourney v. Eaton, 14 Pick., 414.
Durant v. Johnson, 19 Pick., 544.

Partners are presumed, in the absence of any showing of their respective interests, to be equal partners.

Northrup v. McGill, 27 Mich., 234.
Hutchinson v. Dubois, 45 Mich., 143.

Joint purchasers are presumed, in absence of proof of their respective interests, to be equally interested.

Shoemaker v. Smith, 11 Humph., 81.
Edwards v. Edwards, 39 Penn. St., 384.
Buck v. Swazey, 35 Me., 41.

Loring's letter of February 22nd, which was after the purchase money had been fully paid and the deed delivered, indicates pretty clearly that up to that time he did not consider himself entitled to more than one-third. For he says he proposed to Mason to take Palmer's Ossipee at net cost,

in lieu of one-third of the purchase price of this land, and to retain one-third interest in the land, and that he, Loring, would then retain one-third, and Frue and Palmer together one-third. Loring was evidently unwilling to diminish his own interest which was one-third, otherwise the most natural proposition would have been that Mason should take one-fourth and each of the others retain an equal interest.

Still more, if Loring had then conceived himself entitled to retain one-half, the more likely proposition would have been that Mason take one-sixth and Frue and Palmer the same.

So we say this letter bears a very strong implication that Loring himself up to that time did not conceive himself entitled to a larger interest than one-third.

In march following, however, he settled with Frue on the basis of Frue getting but one-fourth; and as Frue accepted the one-fourth, undoubtedly thereafter Loring was entitled to retain in addition to his original one-third, the one-twelfth which Frue had relinquished from his original one-third. But there was no reason growing out of that transaction why he should also retain one-twelfth out of Palmer's original one-third, for Palmer certainly had done nothing to relinquish it.

The rights of the parties had been fixed by the situation of things at the time the contract was made, or at the latest at the time the deed passed; and in the absence of any act on Palmer's part thereafter diminishing his interest to one-fourth, it did not then, and does not now, lie in Loring's power to dictate such a diminution of his interest.

At the time of the purchase if any one of the three had the right to dictate what the several interests should be, it was Palmer; and least of all Loring; for the bargain was Palmer's, and Loring might have been excluded entirely, or let in for such share only as Palmer chose.

It is a little amusing to see how imperiously Loring now asserts what interests he expected "in his mind" to permit Palmer and Frue to have.

## VI.

## The Bill Sets Out a Good Case.

In the presentation of this cause in the Court below, the point was made that the bill does not make out a case; and the point was presented under two heads.

1. That it does not sufficiently set out an express trust, in that it fails to state clearly the interests of the several parties. While it does allege that the purchase was intended to be on joint account, it fails to state the proportions to which each was entitled.

2. That it does not set out any purpose of fraud or specifically charge any fraud.

Taking up the last head first, we say that the bill sets up the actual facts, and if they make out a case of legal or constructive fraud, that is sufficient. It is not necessary to characterize it or specifically name it in the bill as fraud.

As to the other head, it is enough to say that as the law presumes a joint purchase to be one in equal interests, an allegation as to a purchase that it was to be and was a purchase on joint account is a sufficient allegation that the interests were to be and were equal. An allegation of that from which the law presumes the interests to be equal, is a sufficiently direct and specific allegation of equal interests.

In the absence of a special demurrer an argumentative allegation is good. The bill shows upon its face by fair inference that the complainant claims his interest was to be an undivided one-third. In paragraph 2, in speaking of the purchase, the bill avers "that said purchase was intended to be upon the joint account of said Loring, Frue and your

orator, each sharing equally, provided the said Loring should desire an interest therein;" and further on in the same paragraph it is averred that the orator wrote and addressed a letter to said Loring, enclosing the memorandum of the Mason contract, instructing him to go to New York and obtain from Mason a formal contract, etc., "and further proposing to said Loring that said purchase be made upon the joint account of himself, Frue and your orator;" and at the close of said paragraph it is averred "that said purchase was so made in the name of said Loring, and said contract executed to him as vendee thereunder, as trustee, in trust for the joint benefit of himself, the said Frue, and your orator." And in paragraph 4 it is averred, in reference to the memorandum declaration of trust, as follows: "Referring to said Exhibit A, your orator shows that his interest in said premises as therein defined is stated as one-quarter instead of one-third, but he shows that no modification or change of the terms of the original agreement for the purchase of said property was ever made by and with the consent of your orator, but that said change was made by said Loring upon his own motion."

So that the pleader upon the face of the bill has declared that in alleging that it was a purchase on joint account, he means that the parties were to take each one-third.

## VII.

## Laches.

If the Court agrees with us that the writings are sufficient to constitute an express trust, no case is made for the application of the doctrine of laches; for there has been no such definite, unambiguous and unmistakable renunciation of the trust shown to have come to the knowledge and apprehension of the complainant as to call upon him to assert his claim, prior to the deed to Welch; and the suit was brought

within six months after the date of that deed, and at once after knowledge thereof came to the complainant.

On the basis, however, that the circumstances under which Loring took this title make out a case of constructive trust, and convert him into a trustee *ex maleficio*, there is ground for argument of the question whether the equitable claim of the complainant has become stale by mere lapse of time.

No definite general rule can be laid down as to the length of time which will bar relief. The question is one of equitable discretion to be determined by the Court in each case according to the nature and circumstances of the particular case. As Mr. Justice Christiancy says in *Campau* v. *Van Dyke*, 14 Mich., 371, 378: "The only just rule which can be laid down upon this point is that such a bill must be brought within a *reasonable time*, having reference to the *nature* and *all the circumstances of the particular case*;" and this rule is also fully established by the decisions of this Court; *Badger v. Badger*, 2 Wall., 87; *Harwood v. R. R. Co.*, 17 Wall., 78; *Marsh v. Whitman*, 21 Wall., 178; and *Sullivan v. Portland etc. R. R. Co.*, 4 Otto, 806.

In the latter case Mr. Justice Swayne says: "Every case is governed chiefly by its own circumstances; sometimes the analogy of the statute of limitations is applied; sometimes a longer period than that prescribed by the statute is required; in some cases a shorter time is sufficient; and sometimes the rule is applied where there is no statuable bar. It is competent for the Court to apply the inherent principles of its own system of jurisprudence, and to decide accordingly."

It is therefore of little benefit to attempt to classify the numerous decisions on this subject, according to the period of time involved in each; for the circumstances of the various cases differ so essentially that no definite rule can thus be deduced. Perry on Trusts, §229, however, collects the cases, and the periods there given as held to be sufficient vary all the way from 17 to 50 years; and other cases are

cited where a delay of 11, of 12 and of 18 years was held to be no bar.

It is more to the purpose to gather from the authorities what special circumstances are considered as having weight in determining whether the delay has been unreasonable in the particular case; and prominent among the considerations which are held to have weight in determining this matter are the following: (1) Whether great changes have taken place in the condition, situation or surroundings of the property; (2) Whether the defendant has expended money in good faith in improvements or additions to the value of the property; (3) Whether the rights of other parties have intervened; (4) Whether through the death of witnesses or parties, or the destruction of documentary evidence, or other peculiar circumstances, the Court is left in uncertainty as to the precise facts of the original transaction, and the defendant is placed in worse position than if suit had been promptly brought; (5) Whether anything has occurred out of which an equitable estoppel has arisen.

The real basis of the rule rests largely upon considerations of public policy and the attainment of reasonable certainty, precision and stability in the administration of justice.

In the case at bar, no change in the condition or surroundings of the property appears to have taken place in the interval; this was wild land, unoccupied and unenclosed; no expenditure was made on the property except taxes of $50 or $60 a year, and the salary of an agent at $50 a year to protect the timber from trespassers; no rights of third parties intervened; no witnesses have died and no important documentary evidence has been lost; no uncertainty exists as to the precise facts of the original transaction; and no circumstances of equitable estoppel exist.

Under such circumstances ought this complainant to be held to have lost his rights by the short delay in bringing suit?

Let us briefly review the facts bearing on this question:

Loring had before held large interests of Palmer's in trust in the same manner, and had theretofore honestly administered the trust. The fact that Loring took this title to himself "as trustee" was at least a circumstance calculated to lull Palmer into a feeling of security.

During all this time all Palmer's means except his homestead were invested in stocks held by Loring as trustee.

They turned out to be ample. He was therefore all the time doubly secured. Loring says Palmer was then insolvent and gives that as a reason (both in his answer and in his testimony) for not pushing his suit against him. Palmer during this period was much away from home, at Washington, and at Lake Superior; a part of the time, indeed, devoting his time and energies to relieving and aiding Loring in his difficulties with South Pewabic.

In March and April 1872, Loring sold a portion of the stocks he held in trust for Palmer, without Palmer's knowledge, and the proceeds received by Loring from those sales were more than sufficient to pay him for Palmer's one-third interest in this land and all else that he could legitimately claim against him. He silently pocketed all this money, without in any way accounting for any part of it. The only honest basis he had for keeping this money was that it was due him for Palmer's one-third of this land.

As matters stood at that time had not Loring as against Palmer a right to retain that money and apply it upon Palmer's interest in this land? By his accounting now he has done so. Their rights in this regard were mutual. If Loring had then the right to retain this money in payment of the land, Palmer had the right to the land. He saw fit to retain the money. There was no other claim to which he could apply it. He undertook to make no application of it; made no accounting for it whatever.

The court of equity ought now, rather to make such application of the proceeds of those sales of stocks as will

accord with the honest duty of this defendant, than to attribute to him the design to dishonestly withold both the money and the land.

The deed to Welch was made July 1st, 1875. It was recorded July 8th. Prior to that there had been no overt act on the part of Loring in reference to this land that was in violation of his obligations to Palmer as *cestui que trust*, unless the contract with Frue might be so construed. The existence of that contract only came to Palmer's knowledge just prior to the bringing of this suit. The deed to Welch came to his knowledge at the same time. He sent for a copy of it from the records and brought suit immediately on its receipt.

Moreover, the Frue contract contains no very distinct assertion of any claim that is inconsistent with the complainant's rights. It is an agreement between Frue and Loring to give each other the preference on a sale of the interest of either, with no definite assertion of the extent of Loring's interest.

It is pretty certain Frue did not suppose this contract worked any prejudice to Palmer's rights or he would have notified him.

So long as Loring held this title expressly in trust, having recognized Palmer as one of the beneficiaries of the trust, and having never made any absolute and positive renunciation of the trust, no laches can be justly imputed to Palmer for not taking legal proceedings. The question thus far was *inter partes*. And Welch, even on the face of his deed, is but a mere dry trustee, having no beneficial interest; and he is made a party only because he holds the naked legal title.

*In 1871, within two years after Loring obtained title to this land, he brought suit against Palmer, seeking to recover a large amount which he claimed to be due him from Palmer on account of the transactions in which they had been mutually interested. A trial of this suit would have*

*settled the question as to the existence or non-existence of this indebtedness. Palmer interposed a defence to this suit, and it was pending until 1874, when it was voluntarily discontinued by Loring without notice to Palmer.*

*Palmer filed his bill in this cause almost immediately on learning of this discontinuance. We submit it would be grossly inequitable to charge him with laches on account of his delay to proceed pending such suit by Loring.*

We submit that under all the circumstances there are no overriding reasons of public policy that should impel the court of equity to withhold its hands from this trust; and no established rule of equity jurisprudence that stands in the way of the restoration to this complainant of what the proofs so clearly show are his just rights, and of the redress of the great wrong sought to be inflicted upon him by this grasping and unscrupulous defendant.

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